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Current Topics.

Lloyd's Register of Shipping.

BY the death of Sir ANDREW SCOTT, who for many years filled the important post of Secretary of Lloyd's Register of Shipping, attention is again drawn to the place which this institution holds in the sphere of shipping and insurance as well as in the law connected with these subjects. Like many another organisation which plays a great part in the world of commerce, Lloyd's began in very humble surroundings, namely, in a Lombard Street coffee house kept by one LLOYD who never, we may be certain, had any proleptic vision of the fame which his patronymic was to enjoy in the City of London. His coffee house became the rendezvous of bankers, merchants, insurance brokers and others interested in overseas commerce, and there was gradually built up an accumulated mass of the most valuable information regarding ships and their cargoes, which in time gave birth to Lloyd's List. Like many another institution, this has added a familiar phrase to our common vocabulary, namely, "A1 at Lloyd's," which is rightly regarded as the highest commendation that can be bestowed on a person or thing. Mr. H. W. FOWLER, a stickler for accuracy in all such matters, has, in his delightful book, "Modern English Usage," this entry: "Lloyd's, underwriters. So written, not -ds or ds'."

The Preservation of Records.

THE annual report of the British Records Association draws attention to a letter published in *The Times* in which the Master of the Rolls indicated that the association, co-operating with approved repositories throughout the country, would be prepared to advise owners about papers in their collections which should be preserved in the interests of history. It is stated that the records preservation section of the association is, in fact, engaged in this work, and that the association is issuing to librarians and others many thousands of advisory leaflets and notices inviting owners of accumulations of papers to make use of its help, and pointing out that free advice will be given on what should be examined in any collection before the whole is consigned to the pulper. The annual general meeting of the association was held in Niblett Hall, Inner Temple, on Monday, and during an informal discussion on record problems in war time it was stated that over 100 letters had been sent to waste-paper merchants asking them to help by sorting out old parchments and hand-made paper and to inform the local "rescuer" who would look through them. It appears that letters have also been sent to repository owners and others who are willing and qualified to help asking them to undertake examinations. Readers do not need to be reminded of the value of the work performed by the association. It may, however, not be out of place to conclude this brief note by making reference to an appeal which has been issued by the Master of the Rolls and which deals with the position of the association at the present time. Sir WILFRID GREENE, M.R., recalls that during the last war it was a common experience that many persons who in peace time supported the learned societies by their subscriptions found it necessary to economise in that direction with the result that organisations which had been built up with much expenditure of time and energy were imperilled, if not completely wiped out. In expressing the hope that in the present war the British Records Association might form an exception the Master of the Rolls said: "The financial support it demands is not large, but on the other hand the numerical strength of its supporters is one of its chief assets. Moreover, membership is not directed merely to securing for the member the advantage of receiving publications or attending meetings; rather it is an affirmation of belief in the national importance of archive work, and that is a belief which should not be allowed to perish even in time of war."

War Risks Insurance: Advertisements.

THE Restriction of Advertisement (War Risks Insurance) Bill was read a second time in the House of Commons about ten days ago. Its purpose is to deal with an admittedly difficult position. The committee presided over by LORD WEIR, which was appointed by the Government to consider the problem of compensation to owners of private property damaged by enemy action, pronounced its inability to find or devise any scheme of mutual protection against war risks which would be either practicable or justifiable (Cmd. 6116, H.M. Stationery Office, price 4d. net). This view is not likely to allay the anxieties of property owners, who naturally wish to take what steps they can to provide for the insurance of

their property. The President of the Board of Trade, who moved the Second Reading of the above-named measure, recalled that in April, 1937, the Government stated that, in their view the indemnification of property against war risks was not a fit subject for insurance, and that, in consequence, there was a fruitful field for appeal by companies and individuals who claimed to be able to do, with their rather limited resources, what the Government, with the whole resources of the State behind them, had declared it impossible to do. Complete prohibition of these companies would not, it was said, be justified. So long as people realised that, in subscribing to them, all they were doing was gambling on the fact that it would be the house outside the scheme in which they were interested would be destroyed, and not the houses inside it, no great harm would be done. The Bill deals with the position by controlling the issue of prospectuses and advertising by such companies and empowering the Board of Trade to attach conditions to the grant of permission for circularisation, extending to the way in which the company is carried on. The conditions are not confined to stating how the trust fund is to be administered, or the amount that may be placed to expenses. Mr. OLIVER STANLEY went on to suggest that the best machinery for securing control would be to discuss with the committee of three which was to be set up the sort of uniform standard that should be observed and attached to all permissions granted. The hand of the Board of Trade would be immensely strengthened by the advice of such a committee. What was desired was an independent committee, which would not be regarded as having a Government bias and which would allow the companies concerned, if the committee felt they were honestly conducted, to set out to the public exactly how much—or how little—they proposed to perform.

Road Accidents and the Black-out.

THE nature of the road casualty problem under black-out conditions emerges more clearly as further experience is gained. Figures for October record a total of 919 deaths, compared with 1,130 for the previous month and 641 for the corresponding month last year. For the first time the return of the Ministry of Transport shows the number of fatal accidents which occurred during the hours of darkness. The total for last month amounted to 564. Of the 572 pedestrians killed during the month, no less than 424 were killed in the dark. Only three of these were under fifteen years of age. On the other hand, it was stated at a recent Press conference arranged by the National "Safety First" Association that about one-third of those killed on the roads since the beginning of the war were over seventy years of age, one-third were between sixty and seventy, and one-sixth were between fifty and sixty, only one-sixth being under fifty. It was accordingly suggested that, if elderly people were to refrain from going out in the dark except when absolutely necessary, the number of accidents would be greatly reduced. According to Mr. HOWARD HODGES, acting General Secretary of the Association, it has been found that a great percentage of street accidents have been caused by pedestrians stepping into the path of a car in the belief that the driver could see them. The pedestrian, he said, had not been able to rid himself of his peace-time road psychology and subconsciously thought he could be seen. The correctness of this diagnosis would appear to be confirmed by the higher incidence of accidents among the middle-aged and elderly, among whom habits, once formed, are perhaps less easily eradicated. But it also suggests that no great improvement in the situation is likely to be effected by a more rigorous enforcement of the law. Proposals put forward by the Association to the Ministry of Transport and the Ministry of Home Security include the modification of lighting restrictions and the employment of air-raid wardens to supplement the work of the police in giving warnings and advice to road users.

Rules and Orders: Compensation (Defence) Notice of Claim (No. 2).

FURTHER rules to those noted in our last issue have been made by the Treasury under powers conferred by ss. 11 and 13 of the Compensation (Defence) Act, 1939. These, the Compensation (Defence) Notice of Claim (No. 2) Rules, 1939, prescribe forms for use in connection with claims for compensation or for apportionment under the Act in respect of the requisition or acquisition of vessels (Forms 1 and 2), or aircraft (Forms 4 and 5), or in respect of the requisition of space or accommodation in a ship (Form 3) or aircraft (Form 7). These forms follow, with appropriate modifications, the general lines of those provided under the earlier rules. Form 6 of the new rules is prescribed for use in relation to claims in respect of the requisition or acquisition of vessels under construction, and it is provided that such claims shall cease to be made by notice in accordance with Form 5 contained in the Schedule to the Compensation (Defence) Notice of Claim Rules, 1939.

Rules and Orders: County Court (Emergency Powers) (No. 2).

ATTENTION is drawn to the County Court (Emergency Powers) (No. 2) Rules, 1939, which have been made by the Lord Chancellor under powers conferred by s. 2 of the Courts (Emergency Powers) Act, 1939, and s. 17 of the Rent and Mortgage Interest Restrictions Act, 1920. They substitute new rules for rr. 9, 12 and 16 of the County Court (Emergency Powers) Rules, 1939, and provide for additional rules, 14A and 16A, to be inserted after rr. 14 and 16 of the earlier rules. Two new forms are added. The new rules are fully dealt with in an article appearing on p. 859 of the present issue and, beyond noting the fact that they come into operation on 20th November, nothing more need be said of them here.

Recent Decisions.

IN *Stevens* (*Inspector of Taxes*) v. *Tirard* (*The Times*, 3rd November) the Court of Appeal (SCOTT, CLAUSON and GODDARD, L.JJ.) upheld a decision of LAWRENCE, J. (83 SOL. J. 640), to the effect that three sums which the respondent was ordered by the High Court to pay to his former wife (who had divorced him) for the maintenance of his three children did not constitute income of the children within the meaning of s. 21 (3) of the Finance Act, 1920, so as to disentitle the respondent to children's allowance.

In *Jones* v. *Pollards Hill Golf Club* (1928), *Ltd.* (*The Times*, 1st November), where the plaintiff claimed damages for personal injuries alleged to be due to loose rubber nosing on the stairway in a golf club-house, BRANSON, J., gave judgment for the defendants on the ground that the plaintiff had failed to show lack of reasonable care on the part of anybody charged with the duty of keeping the premises reasonably safe. The plaintiff was a director of the defendant company and a member of the committee, and his lordship intimated that, apart from failure of the action on the facts, a member of a board of directors or of a committee who were charged with the duty of seeing that certain things were done could not sue a company or a club for the failure to do anything the doing of which was the duty of the board or the committee.

In *Re Morrison's Will Trusts: Walsingham* v. *Blathwayt* (*The Times*, 10th November) BENNETT, J., held that a forfeiture clause directed against any legatee who, in the testatrix's lifetime or after her death, should "be or become a Roman Catholic or shall give any promise or shall become under any obligation to bring up as a Roman Catholic any child of such legatee" did not infringe the rule against perpetuities (see *Re Russell* [1895] 2 Ch. 698), and that on the life tenant becoming a Catholic it operated to defeat the interests of all the persons to whom a settled legacy had been given.

The County Court (Emergency Powers) (No. 2) Rules, 1939.

[*These rules, which come into operation on Monday next, the 20th November, are set out at pp. 873-5 of this issue.*]

THE provisions in the principal rules (County Court (Emergency Powers) Rules, 1939) for making an application for leave to proceed to enforce a judgment were open to criticism on certain points which have now been met in the new rules.

Under r. 9 of the principal rules, the application could be made on a notice before judgment (Form No. 2) or after judgment (Form No. 3), which had to be served personally. It was found difficult to serve the notice personally on many defendants who were still living at home and working. There was a doubt whether the notice had to be served by the plaintiff or whether it could be served by bailiff—an important point where the plaintiff lives a long way off—and there was a doubt whether there was power to make an order for substituted service if personal service proved impossible.

Under the new rules it seems clear that if the plaintiff fails to effect personal service he may apply for substituted service (r. 9 (5)); that, if he so requests, the service will be undertaken by the court (r. 9 (2)); that if the bailiff fails to effect personal service at the first attempt, he may acquire sufficient information to justify the registrar in authorising service by post or by delivering the notice at the defendant's residence (r. 9 (3)). These alternatives are not likely to be authorised if the defendant is, say, in France, but when he is known to be still living and working at home or in the neighbourhood the alternative methods of service should prove useful.

Another point related to judgment summonses which had been served before the war and had not been heard. There was no power to make an order of commitment, because inevitably the notice under the Act (Form No. 4) had not been served with the summons, and there was no express power in the principal rules of curing the defect without starting afresh. Various expedients have been adopted in practice, but the new rules authorise the issue of a successive summons for service with the notice (r. 12 (2)).

The rules also make it clear that where an order of commitment was made before the war and was suspended on terms, authority to issue the order for execution may be obtained on an application for leave to enforce the original judgment (r. 12 (4)).

The new rules confer some privileges on landlords and owners of goods sold on hire-purchase which are denied to mere money creditors.

Notice of an application for leave to enforce a judgment for the recovery of premises which have become liable to forfeiture for non-payment of rent may be served by the bailiff delivering it to some person on the premises or by affixing it to a conspicuous part of the premises. To authorise these methods of service the registrar need not be satisfied that the notice is likely to come to the knowledge of the defendant in time for him to appear, but, presumably, he will only authorise them in special circumstances—for instance, if the defendant is inaccessible and the premises are in the beneficial occupation of someone who may be regarded as representing the defendant, or if the premises are vacant (r. 9 (3) (*c*)).

An application for leave to distrain may be served by the landlord's rent collector (amongst others). Service by post which was commonly used under the Rent Act is only allowed now on an order for substituted service under Ord. 8, r. 6, but the application and notice may be delivered by the rent collector to a person on the premises, and he must then make an indorsement (like that commonly made by bailiffs on Form No. 31) which will show the registrar whether the service is "doubtful" or whether it may be assumed that the documents have reached the tenant without further proof (r. 16 (3) (*d*)).

There is an important provision which enables the registrar in some cases even to dispense with the notice of doubtful service (r. 16 (3) (*e*)). Where, for example, the tenant is inaccessible but his wife or some other relative is in beneficial occupation of the premises and the furniture, and could perfectly well see that the rent is paid in whole or in part out of an allowance or other means, the landlord will, under this provision, be able to bring his case before the court, notwithstanding the absence of the tenant.

Rule 16 (5) presupposes that where premises are within the Rent Act limits and are held under a pre-war tenancy, the landlord requires leave to distrain both under the Rent Act and under the Emergency Powers Act. It provides that he must combine his proceedings in one application which is to be under the new r. 16.

Applications for leave to exercise some other "self-help" remedy must be made by "originating application" as in the principal rules, but if the remedy involves legal proceedings then there is power to apply for leave by an interlocutory application before or after judgment in the proceedings (r. 16A (2)). Where the proceedings consist of an action for the return of goods and the goods are not in the possession of the defendant there is a special provision to enable the notice to be served on the person in possession of the goods, if no other authorised method of service is available (r. 16A (3)). Suppose, for instance, that there is a judgment for the return of goods let under a hire-purchase agreement, that the judgment has been suspended on terms, and that the hirer is inaccessible, but the goods are being used and enjoyed by his wife or are piling up expenses in a repository, then the owner of the goods would, but for this provision, be unable to bring his application before the court.

In the provisions of the principal rules there was a paragraph prescribing court fees. This has been revoked without being replaced in the new rules, but it may be presumed that they will be embodied in a separate Fees Order.

The Courts (Emergency Powers) Act, 1939.

II.

BY s. 1 (2) (*a*) (iv) of the 1939 Act, leave is necessary for the realisation of any security, subject, however, to three provisos. Proviso (*c*) excepts from s. 1 (2) "any right or power of pawnbrokers to deal with pledges" (cf. 1914 Act, s. 1 (7)). Proviso (*a*) excepts from the subsection, "any power of sale of a mortgagee of land or an interest in land who is in possession of the mortgaged property at the commencement of this Act, or who before the commencement of this Act has appointed a receiver who at the commencement of this Act is in possession, or in receipt of the rents and profits, of the mortgaged property." Proviso (*b*) excepts "any power of sale of a mortgagee in possession of property other than land or some interest in land, where the power of sale has arisen and notice of the intended sale has been given before the commencement of this Act."

These provisions, as will be seen, provide different rules for mortgagees of land and personalty. They also differ from the corresponding provision of the Act of 1914, which lay solely in the words "except by way of sale by a mortgagee in possession" in brackets after "security" early in s. 1 (1) (*b*).

There were various cases on the subject of realisation by a mortgagee under the 1914 Act. In *Braybrooks* v. *Whaley* [1919] 1 K.B. 435 a mortgagee, not in possession, put up the land for sale on 3rd August, 1917, and the plaintiff agreed to buy. Completion was due in October, but the mortgagee had not obtained leave to realise his security, and himself purported to annul the sale on that ground at the end of August. In an action by the purchaser for specific performance, substantial damages were awarded, on the ground that

no leave was necessary before putting the property up for sale. Such a transaction was not realising a security, but only taking a step towards realisation. A mortgagee does not realise his security till he is paid at completion. Similarly, in *National Bank* v. *Claffey* (1917), 2 I.R. 281, it was held that for a mortgagee to bring an action of ejectment is not realising his security, but only taking a step towards doing so, and therefore leave was not necessary for bringing the action.

The law is not now the same, since the new Act does not say that no person "shall realise any security," but "a person shall not be entitled . . . to *proceed* to exercise any remedy which is available to him by way of . . . the realisation of any security." To "proceed" to do a thing may only be a roundabout way of saying to "do" the thing. But in a statute words tend to be taken in their accurate meaning; if so, "proceed to" means "take a step towards." On this view *Braybrooks* v. *Whaley* would not now be decided as it was, as leave would be necessary for a mortgagee to put the land up for sale. This view is borne out by the fact that proviso (*d*) expressly excludes the institution of proceedings for the recovery of land from s. 1 (2). No such provision was needed in the 1914 Act, as *National Bank* v. *Claffey* showed.

In the 1914 Act a mortgagee in possession, whenever he got into possession, was permitted to realise his security. The exception was not confined to legal mortgagees or to mortgagees of land. The contrary was argued, and decided against, in *Ziman* v. *Komata, etc., Ltd.* [1915] 2 K.B. 163, approved in *Barnard* v. *Foster* [1916] 2 A.C. 154. In the *Ziman* case the plaintiff had, in 1913, executed a memorandum of deposit in respect of some debentures which he handed over to secure a loan. This amounted, of course, to an equitable mortgage. The memorandum gave power for the mortgagee to call the loan in and to sell if it was not duly paid off. Notice to call in the loan was given in November, 1914. The plaintiff obtained an *ex parte* injunction to prevent dealings with the debentures without leave, but the injunction was dissolved by the Court of Appeal on the ground that the defendants were mortgagees in possession and so were excepted from the 1914 Act. This case would now be decided the other way, because though the mortgagees were in possession before the war, the power of sale had not arisen before the war. Hence, they would not be within the exception to the rule against realising securities without leave provided by s. 1 (2), proviso (*b*), of the Act of 1939. Similar considerations would apply to the facts of *Barnard* v. *Foster* [1916] 2 A.C. 154, where the question was whether a broker who had bought shares for a client before the war could realise his lien where, after the outbreak of war, the client refused to pay for them and take delivery. Immediately after the decision in *Barnard* v. *Foster* in the House of Lords, the Courts (Emergency Powers) (No. 2) Act, 1916, was passed, which, by s. 1 (1) (*c*), substantially enacted the same rules on these points as are contained in the 1939 Act.

Under the 1914 Act leave was necessary for a person to "foreclose." This word was held to mean "obtain a decree of foreclosure absolute" (*Re Farnol, Eades, Irvine & Co., Ltd.* [1915] 1 Ch. 22). But the Courts (Emergency Powers) (No. 2) Act, 1916, s. 1 (1) (*b*), provided that leave was to be necessary for the "institution" of proceedings for foreclosure or sale in lieu of foreclosure; and the same is the case under the 1939 Act, s. 1 (2) (*b*), with the addition that leave is also necessary to "take any step in any such proceedings instituted before the commencement of this Act." Presumably, this provision only refers to taking the first war-time step in such proceedings and not to any and every war-time step. After the amendment of 1916 it was held, under those provisions, that leave was necessary for the enforcement of a charging order on stock, and it was intimated that leave would also be necessary to enforce payment of sums secured by a portions term (*Hosack* v. *Robins* [1917] 1 Ch. 142, 332). These points would be the same under the 1939 Act.

By s. 1 (3) of the Act of 1939 leave is made necessary for the execution of orders for possession of land on the ground of non-payment of rent, to which the Possession of Mortgaged Land (Emergency Provisions) Act, 1939, adds judgments for possession obtained by a mortgagee by reason of default in payment of money. But, as we have seen, there is nothing to prevent proceedings for possession being brought or prosecuted (s. 1 (2), proviso (*d*)). The position was the same under the Act of 1914 (*Ness* v. *O'Neil* [1916] 1 K.B. 706). That was an action for possession for non-payment of rent under a lease of 1908, and the point was put that leave was necessary to issue the writ in such an action. The Court of Appeal held that no such leave was necessary, though leave would, of course, be necessary to execute any judgment that might be obtained.

Section 1 (4) of the 1939 Act deals with the applications for leave under the previous subsections. Leave is not to be given if "the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation, in question is unable immediately to do so by reason of circumstances directly or indirectly attributable to any war in which His Majesty may be engaged." There is no substantial difference between this subsection and the corresponding provision of 1914. It is important to notice the limits of this subsection.

As the full Court of Appeal pointed out in the recent test case of *A* v. *B*, the onus is on the person liable to prove first his inability to pay the sum in question, and second, that such inability is due to the war. Unless he can establish those two points, leave to enforce will be given. "Unable," is a very strong word, and it is not enough to show hardship or inconvenience. The inability referred to is inability to pay the sum in question, not general inability to pay *his* debts, as is the case under subs. (5), in connection with bankruptcy. The full court laid down that in those cases the affidavit must amply set out the defendant's financial position. They indicated that the existence of other debts was a factor to be given some weight, and that the fact that a defendant has a sum of money with which he could satisfy his obligation is not necessarily conclusive against him. But the onus is on him, and it is not enough to show some financial embarrassment. Moreover, the inability must be due to the war. Where this was not so, the defendant's submission failed (*Clark* v. *Smith* [1939] W.N. 345). And, of course, there is no power to relieve when the contract is made after the war began.

There is a very curious omission from the 1939 Act. The 1914 Act was expressed to be "inapplicable to any remedies of a creditor in the case of a sum of money payable by, or recoverable from, the subject of a Sovereign or State at war with His Majesty" (s. 1 (7)). The 1939 Act contains no such provision, but it is difficult to see why enemy aliens should have the privileges of the Act.

By s. 2 the Lord Chancellor has power to designate the "appropriate court" to which applications for leave must be made and generally to make rules as to applications under the Act. He has exercised these powers in the Courts (Emergency Powers) Rules, 1939, the Courts (Emergency Powers) (No. 2) Rules, 1939, and the County Court (Emergency Powers) Rules, 1939. The effect of these rules may be shortly stated: leave to execute a judgment under s. 1 (1) is to be obtained from the court in which the judgment was given or is being sought, except that if the case is under the Debtors Act, 1869, leave is to be obtained from the court in which enforcement is being sought. Leave to institute or take any steps in foreclosure proceedings is to be sought in the court where the proceedings are pending or are to be instituted. Leave to exercise the various remedies referred to in s. 1 (2) (*a*) may be sought in the High Court, but is only to be sought in the High Court in special circumstances in cases where the county court is an alternative. The county court is an alternative (1) in case of distress for sums not exceeding £100; (2) for entry or re-entry into land or the appointment

of a receiver where neither the annual value nor the rent exceeds £100 per year; (3) for taking possession of property other than land, or appointing a receiver where the sum to be recovered is under £100; (4) for the forfeiture of a deposit, where the sum in respect of which the deposit is made is under £100; and (5) for realising a security, where the amount owing is under £500. The rules also lay down the procedure to be followed in applications; broadly speaking, their effect is that where there are pending proceedings (as where leave to enforce a judgment for money or possession is sought, or leave to take a step in foreclosure proceedings) the application is by summons in those proceedings. In other cases it is by originating summons.

War and Contracts.

VIII.—PARTNERSHIP.

By the Partnership Act, 1890, s. 34:—

> "A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership."

The results of this principle may be stated in the following propositions:—

1. "No partnership can subsist between the subjects of hostile powers, and if two partners are resident in two different countries their partnership is determined by a war between those countries" (see *Esposito* v. *Bowden* (1857), 7 E. & B. 763, 785, *per* Willes, J.).

2. "It is the place of his residence or trading, and not the place of his birth, or his personal attitude, which is of importance in these matters; and, therefore, if a foreigner comes over here, enters into partnership here, and dwells here, and then war breaks out between this country and that of which he is a native, the partnership will not, nor will his rights as a partner (so long as he remains here with the permission of the Crown), be affected by the war, any more than if he were an Englishman" (see *West* v. *Williams*, 1 Salk. 45; *Porter* v. *Freudenberg* [1915] 1 K.B. 857, 868, *per* Lord Reading, C.J.).

3. "On the other hand, if a partnership consists wholly of Englishmen, some of whom reside here and some in another country, and war breaks out between that country and this, the partners abroad become enemies for all purposes of trade and commerce, just as much as if they were natives of the country in which they reside" (*McConnell* v. *Hector* (1802), 3 Bos. & P. 113, 114, *per* Lord Alvanley).

4. "The same is true, even in the absence of any fixed residence in the belligerent country, if some of the partners go over there and trade there during the war" (Lindley, "Partnership" (1935), 10th ed., pp. 88-90; see *The Jonge Klassina* (1804), 5 Ch. Rep. 297, 302, *per* Sir William Scott).

To these may be added the following:—

5. "In such a case the interest of a partner remaining in England in goods belonging to the house of business abroad would be liable to capture at sea and condemnation, unless he has taken immediate steps to sever his connection with that house at the outbreak of war" (Lindley, *op. cit.*, p. 90, note (*g*); *The Manningtry* [1916] P. 329, 343, *per* Sir S. Evans, P.).

6. "An alien enemy may . . . be joined as a co-plaintiff in an action by his former partners to recover a debt due to the late firm for the purpose of winding up its affairs" (Lindley, *op. cit.*, p. 87, note (*q*); *Rodriguez* v. *Speyer Brothers* [1919] A.C. 59, 71, *per* Lord Finlay, L.C.).

7. Subject to the terms of peace, an alien enemy partner will be entitled to recover, after the war, the value of his share as it stood at the date of dissolution, together with the profits made after the dissolution by the use of his capital in England (*Stevenson* v. *Aktiengesellschaft für Cartonnagen-Industrie* [1918] A.C. 239, 248, *per* Lord Finlay, L.C.).

8. Conversely, the British partner can recover after the war from the alien enemy partner (or during the war if he could be effectively served) his share of liabilities incurred before the war, and discharged by the British partner (see McNair, "Legal Effects of War," p. 151).

1. *Dissolution upon War.*

In *Exposito* v. *Bowden* (1857), 7 E. & B. 763, the neutral owner of a ship then in a British port, and the defendant, a British subject, agreed, in 1853, that the "Maria Christina," a neutral ship, should proceed to Odessa, load a cargo and proceed to Falmouth. The defendant failed to load the cargo. After the charter-party had been made, but before the ship arrived at Odessa, England declared war on Russia in March, 1854, and Odessa had since become a hostile port; it was impossible to perform his agreement within the time for loading, without trading with the enemy. The plea was upheld.

> "For a British subject (not domiciled in a neutral country . . .) to ship a cargo from an enemy's port, even in a neutral vessel, without licence, is an act *prima facie* and under all ordinary circumstances, a dealing or trading with the enemy, and therefore forbidden by law" (*per* Willes, J., at p. 793).

It has been held that—

> "a contract of partnership with a foreigner was absolutely dissolved by the breaking out of war between the two countries": *per* Chancellor Kent, in *Griswold* v. *Waddington*; cited by Willes, J., *op. cit.*, p. 785; and reported in Pitt Cobbett, "Leading Cases on International Law" (1937), 5th ed., vol. II, pp. 81, 82. (See also the excellent Note on "Effect of War on Commercial Intercourse," *ib.*, pp. 107–118).

Such a partnership is at an end, not merely suspended (see *R.* v. *Kupfer* [1915] 2 K.B. 321, 338, *per* Lord Reading, C.J.).

2. *German Partners in England.*

In *West* v. *Williams*, 1 Salk. 45, it was laid down—

> "If an alien enemy comes hither in time of peace, *per licentiam domini regis* . . . and lives here *sub protectione*, and a war afterwards begins between the two nations, he may maintain an action; for suing is but a consequential right of protection; and therefore an alien enemy, that is here in peace under protection, may sue a bond; *obiter* of one commorant in his own country."

And Lord Reading, C.J., observed, in *Porter* v. *Freudenberg* [1915] 1 K.B. 857, 868:—

> "Conversely, a person may be treated as a subject of the Crown notwithstanding that he is in fact the subject of an enemy state" (see the review of cases at p. 870, *et seq.*).

3. *English Partners in Germany.*

In *McConnell* v. *Hector* (1802), 3 Bos. & P. 113, 114, it was held that a commission of bankruptcy founded on the petition of a British subject resident in England for a debt due to himself and his partners resident and trading in Flushing, then an enemy port, could not be supported. Lord Alvanley declared:—

> "The question is, whether a man who resides under the allegiance and protection of a hostile state for all commercial purposes, is not to be considered to all civil purposes as much an alien enemy as if he were born there."

It is otherwise if his residence in an enemy country were licensed by the Crown (*Ex parte Baglehole* (1812), 18 Ves. 525, 529, *per* Eldon, L.C.).

4. *English partners temporarily in Germany.*

In *The Jonge Klassina* (1804), 5 Ch. Rob. 297, a licence had been granted for a limited purpose to R, a manufacturer of Birmingham, for the importation of certain goods from Holland (with whom England was then at war). On his return from the fair at Frankfurt he went to Amsterdam (where he appeared to have an address) and exported goods. Sir William Scott held the transaction did not come within the licence:—

"A man," he said, "may have mercantile concerns in two countries, and if he acts as a merchant of both, he must be liable to be considered as a subject of both, with regard to the transactions originating respectively in those countries" (at p. 302).

Is a fixed address necessary?

"It is indeed a vain idea," he continued, "that a compting-house or fixed establishment is necessary to make a man a merchant of any place; if he is there himself, and acts as a merchant of that place, it is sufficient; and the mere want of a fixed compting-house there will make no breach in the mercantile character which may well exist without it" (at p. 303).

The property was condemned.

5. *Severance of business relations.*

A consignment which was the joint property of four partners, three British partners and one German partner, was condemned. It was for the British partners to show that on the outbreak of war they had taken prompt steps to sever their business relationship with the enemy partner (*The Manningtry* [1916] P. 329, 343). It is a question of fact whether there has been a continuation of business relations or whether sufficient steps have been taken to sever the connection (at p. 342):—

"An immediate discontinuance of trade, and arrangements for removing, followed by actual removal within a reasonable time, unless detained by causes which might sufficiently account for not removing, would fix the intention to change the domicil" (i.e., the commercial domicil).

The passage is cited by Sir S. Evans, P., *ib.*, from a judgment of Marshall, C.J., in *The Venus*, 8 Cranch. 253, 315.

6. *Alien enemy partner as co-plaintiff.*

In *Rodriguez* v. *Speyer Brothers* [1919] A.C. 59—"The Case of the Enemy Partner" (McNair, *op. cit.*, pp. 56, 57)—the House held by a majority that an alien partner who has become an enemy may be joined as a formal co-plaintiff in an action brought during the war for the purpose of winding up the partnership affairs; to such an action the rule disabling an enemy alien from suing in England does not apply.

Speyer Brothers were a firm of bankers in London. Upon the outbreak of war, because of one partner becoming an alien enemy, the partnership was *ipso facto* dissolved. There were five other partners: four were British, the fifth was American. In 1916 the firm brought an action in the partnership name against the appellant for the recovery of a pre-war debt of £29,000. Judgment was signed in default of appearance, but the order was set aside by the master on the ground that the respondents had no right to sue. Peterson, J., confirmed the master. The Court of Appeal (Bankes, L.J., Sargant, J., Pickford, L.J., dissenting) set aside these orders and remitted the case to the master for rehearing on the merits. This decision was upheld by the House of Lords: Lords Finlay, Haldane and Parmoor; Lord Atkinson and Lord Sumner dissenting.

This exception to the rule that an alien enemy cannot sue in the King's courts—a clear example of judicial legislation—was expressly made upon the ground that to apply the rule to a case like the present would "cause great inconvenience and possibly most serious loss to the British members of the firm, by making it impossible for them to get in the firm's assets" (see *per* Lord Finlay, L.C., at p. 67). There was no danger of the alien enemy being enriched by the proceedings, as none of the assets could be handed to him during the war. To apply the rule in such a case would be "to inflict hardship not on the enemy, but on British and neutral partners" (at p. 71). Viscount Haldane came to the conclusion that although the preponderance of authority had treated the rule as a crystallised rule of "ordinary law," and not as a "mere case of applying policy," judges had not been unanimous, and the supreme tribunal was therefore entitled to look at the "reason of the rule" (p. 86). The "balance of public convenience" was in favour of allowing the firm to get in the debt (p. 87). So also, Lord Parmoor: "To hold to the contrary would be to deprive British subjects, or neutral aliens, of rights which have been held the necessary concomitant of lawful commercial transactions" (pp. 141–42).

Although this exception has, by a majority, been declared to be the law, the two dissenting judgments deserve careful perusal. (A stimulating example of the paramountcy of the rule of law over public policy is given by Lord Atkinson (at pp. 90, 91), who also showed that in the *Nordenfelt Case* [1894] A.C. 535, 565, no new principle of public policy was laid down: the facts, not the principles, were new (p. 107).) These judgments are a complete monograph upon the history in the decided cases up to the present time, of the procedural incapacity of an alien enemy. To the writer their conclusion appears, with respect, to be unanswerable; and the speech of Lord Sumner (pp. 108–133), by the clarity of its argument, its sustained vigour and a massive irony, must surely be as pre-eminent as it is the most delightful of the large number of classical judgments delivered by that great judge. He is in the company of Coke, who declared: "But if this alien becomes an enemy . . . then he is entirely disabled to maintain any action" (cited at p. 116, from *Calvin's Case* (1608), 7 Rep. 17*a*). "The rule as to suits by alien enemies (is treated) as an unqualified rule of personal disability" (p. 117). The rule against trading with the enemy, Lord Sumner admits, is always rested on public policy, but only at the end of the eighteenth century did it attract much attention; yet it is become a rigid rule of law, and "admits of no relaxation in the interests of a profitable trade" (p. 123). This rule is distinct from the rule prohibiting an alien enemy from entering the courts as a suitor, which was "full grown centuries ago" (p. 122). Only recently—as a modern explanation—has this been connected with public policy (p. 123). Nor would Lord Sumner agree that even as a matter of public policy—if the rule of law could be modified in that way—Speyer Brothers should be entitled to sue: "Trading with the enemy might almost as well go on unhindered if the right of litigating in our courts is a right which the enemy can always claim in a well-chosen case" (p. 131). It was said that it is "hard on British subjects, who have been partners with one who is now an enemy, to have the liquidation of partnership concerns impeded" (p. 132). "It may be hard," was the answer, "and yet wholesome for all that . . . Why criticise this rule and undermine its principle on account of hardship which is caused by another rule" (*sc.* the necessity for joining as plaintiffs all the co-contractors)? "As a matter of fact, the law has not much troubled about such collateral inconveniences. Not so long ago the conviction of a partner for felony must have been very inconvenient to the other partners. . . . In the meantime, I suppose the joint contracts could not be sued on till the felon had served his sentence or obtained a pardon" (p. 133).

It should be observed that Speyer Brothers were not without a remedy. If the interest of the enemy partners had been vested in the custodian who was joined as co-plaintiff, the action could have proceeded in the ordinary way:—

"The public custodian would then sue in virtue of the title vested in him by statute, and not for any private person's benefit, but in discharge of a public duty" (p. 131).

Thus, in *Continho Caro* v. *Vermont* [1917] 2 K.B. 587, 591, Atkin, J. (as he then was) held that the Board of Trade could, by order, confer upon the controller of an enemy firm having an English branch, the right to sue in the name and on behalf of the firm for pre-war debts.

7. *Share of Alien Enemy Partner; Post-Dissolution Profits.*

In *Stevenson* v. *Aktiengesellschaft für Cartonnagen-Industrie* [1918] A.C. 239, an English company and a German company carried on a partnership business in England until

1914, when the war operated as a dissolution. The English company continued business with the aid of the partnership plant. The German company were entitled, upon the resumption of peace, to a payment of a share of the profits made after dissolution by carrying on the business with the aid of their capital, as well as to a payment of the value of their share of the partnership property as upon the date of dissolution. This follows from the principle that the property of an enemy is not confiscated, though his right to its return is suspended during war (per Lord Finlay, L.C., at p. 245). Moreover, it is probable that interest upon a debt due to an alien runs during a war (*ibid.*, and see per Lord Ellenborough, C.J., in *Wolff* v. *Oxhom*, 6 M. & S. 92, 106). That point, however, did not arise in this case, the matter being one not of contract but of property (see also McNair, *op. cit.*, pp. 61–63).

(*To be continued.*)

Company Law and Practice.

Further Observations on the Position of Enemy Shareholders.

I HAVE already described (*supra*, pp. 789–790) the main provisions of the emergency legislation relating to shares held by or for the benefit of an enemy, but there are other questions which may arise regarding enemy shareholders and dealings in their shares to which it may be useful to refer.

In the first place there is the question of the exercise of voting rights attached to shares held by enemies. It will be remembered that by virtue of s. 7 of the Trading with the Enemy Act, 1939, and para. 2 of the Trading with the Enemy (Custodian) Order, 1939, the Board of Trade may vest in the custodian enemy property or the right to transfer enemy property. Enemy property means any property for the time being belonging to or held or managed on behalf of an enemy or an enemy subject. Such a vesting order is to operate in the same way as a vesting order made by the court under the Trustee Act, 1925, and accordingly the custodian will thereby acquire the right to transfer shares which are enemy property to himself or to any other person. Once the shares are so transferred the voting rights will, of course, be exercisable by the transferee; if the shares become vested in the custodian, he is entitled to vote (see *In re R. Pharaon et Fils* [1916] 1 Ch. 1). As appears from the decision of the Court of Appeal in that case, he is in respect of the shares entitled to do anything which in the character of a shareholder he can do; thus he can exercise such rights of requisitioning a meeting as are attached to the shares.

But until by virtue of a vesting order and transfer the shares are registered in the name of the custodian or of his transferee, they will remain in the company's books in the name of the enemy shareholder. Dividends payable in respect of such shares must be paid to the custodian (see para. 1 of the Custodian Order); but there is not, I think, any express provision as to the exercise of the voting and other rights attached to the shares. Nevertheless, it seems clear that an enemy is not entitled to exercise rights of voting in respect of shares in an English company. This has been decided by the Court of Appeal to be the position at common law (see *Robson* v. *Premier Oil & Pipe Line Co., Ltd.* [1915] 2 Ch. 125). It was there argued that the prohibition at common law of intercourse with an alien enemy was limited to commercial intercourse or trading, and that the exercise of a right of voting in respect of shares cannot properly be described as commercial intercourse or trading. The Court of Appeal, however, rejected both these arguments and held that the common law prohibition of intercourse with the enemy was not confined to commercial intercourse, and further was prepared to say that, even if it were, the transaction involved in the giving of votes might amount to commercial intercourse.

The legislation as to trading with the enemy which was in force at the time of that decision contained no specific provision regarding the exercise by enemy shareholders of votes in an English company, but it was held that this legislation was not exhaustive and that it did not follow that anything not expressly prohibited was permitted; accordingly the common law prohibition still held good. This, I take it, is equally true of the current legislation. But, having regard to the provisions of the Trading with the Enemy Act, 1939, it will not, I think, be necessary to rely any longer on the common law prohibition of the exercise by alien enemies of the right of voting; for s. 1 of that Act, which makes trading with the enemy an offence, provides that a person shall be deemed to have traded with the enemy if, *inter alia*, he has had any commercial, financial or other intercourse or dealings with, or for the benefit of, an enemy. The decision in *Robson* v. *Premier Oil & Pipe Line Co., Ltd., supra*, shows that voting in respect of shares held by an enemy involves intercourse with an enemy, and it follows that the exercise of the right of voting in such a case, as well as being prohibited by common law, may now constitute a statutory offence. At the same time it is not entirely clear, either from the decision in *Robson's Case* or from the 1939 Act, *who* is guilty of the prohibited intercourse with the enemy if an enemy shareholder votes. It is difficult to see how an enemy, as defined by the 1939 Act, could attempt to vote otherwise than by proxy; and the employment of a proxy to exercise the voting power, as appears from *Robson's Case*, would, no doubt, be a prohibited intercourse between the proxy and the enemy shareholder. But the decision in *Robson's Case* seems to me to be much wider than this; the court did not say that because the common law prohibits intercourse of any kind with an enemy, therefore no one must act as proxy for an enemy; but that because of that prohibition an enemy shareholder cannot vote at all. It may well be, therefore, that the court contemplated, though it did not express the view, that a company which permitted the giving of votes by or on behalf of an enemy, would itself be guilty of the prohibited intercourse; if this is so, then, equally, a company would in similar circumstances be guilty of an offence under the 1939 Act. However this may be, it is clear from *Robson's Case* that at common law a company is entitled and bound to reject votes tendered by or on behalf of an alien enemy shareholder; and I think the same position obtains by virtue of the 1939 Act, with the necessary qualification that, in considering the effect of that Act, the definition of "enemy" contained in the Act must, of course, be applied. (As to this definition and the common law conception of an alien enemy, see pp. 804–5, 824, *supra*.)

The prohibition contained in s. 1 of the 1939 Act, of intercourse with an enemy, does not extend to intercourse with an enemy subject: the distinction, for the purposes of the Act, between an enemy and an enemy subject has been referred to in detail in these columns (see p. 824, *supra*) and it will here suffice to remind my readers that, in the case of individuals, any individual resident in enemy territory is an enemy within the meaning of the Act, whilst an enemy subject is an individual who possesses the nationality of an enemy state and is not a British subject. The Act, as I have said, does not forbid intercourse with an enemy subject, and there is, I think, nothing in the Act to preclude a person who is an enemy subject but not an enemy, e.g., a German national resident in this country, from voting in respect of any shares he may hold. Nor, I think, is such a person's right to exercise his votes affected by the common law, which for the purposes of civil rights regards as the test of enemy character not nationality but residence or the place of carrying on business (see *Porter* v. *Freudenberg* [1915] 1 K.B. 857). Accordingly, a person who is an enemy subject, but not an enemy, would seem to be unaffected in the exercise of his voting rights in an English company: but it is to be observed that a vesting order in favour of the custodian may be made in respect of the shares of an enemy

subject, for the power to make such a vesting order extends to "enemy property," which, as I have mentioned, includes property belonging to an enemy subject.

I have referred on a previous occasion (pp. 789–90, *supra*) to the provisions of s. 5 of the Trading with the Enemy Act, 1939, whereby, *inter alia*, the allotment or transfer of shares to an enemy subject without the consent of the Board of Trade is to confer no rights or remedies on the allottee or transferee, and the company is not to take cognisance of any such transfer. This specific provision applies to allotments and transfers to an enemy subject and to an enemy: but the question arises whether, nevertheless, allotments and transfers to an enemy are prohibited by virtue of the general prohibition contained in s. 1 of the Act of commercial, financial or other intercourse or dealings with, or for the benefit of, an enemy. There can, I think, be no doubt that a company which purports to allot or a person who purports to transfer shares to an enemy is guilty of an offence under that section: but there is no express provision that an allotment or transfer to an enemy is, as in the case of an allotment or transfer to an enemy subject, to confer no rights or remedies and to be disregarded by the company. What then is the position of a company confronted with a transfer to an enemy who is not an enemy subject? There is no express requirement that it must disregard such a transfer, though it would, I suppose, be proper for the company to refuse to register such a transfer if it involves the commission by the transferor of an offence under s. 1 of the Act. But suppose the transfer to an enemy is by a shareholder who is a national of and resident in a neutral country and accordingly not subject to the provisions of s. 1 of the Act?

Perhaps the answer to these questions is to be found in the consideration that the company itself may be committing an offence under s. 1 of the Act if it registers the transfer, i.e., that it is by the act of registration having intercourse or dealings with or for the benefit of an enemy. No doubt these words are much more easy of application to the transferor, but it is perhaps not unreasonable to say that the registration of a transfer involves having intercourse or dealings with, or, at least, "for the benefit of" an enemy: and certainly if, as I have suggested, a company may be guilty of that offence if it permits an enemy to vote at a meeting, the registration of a transfer to an enemy would seem an *a fortiori* case. At the same time it seems curious that if it was intended that a company should give no effect to a transfer of shares to an enemy who is not also an enemy subject, the matter should have been left to be inferred from the general prohibition in s. 1 of the Act, and that the specific provision in s. 5, relating to transfers to an enemy subject, should not have expressly included transfers to an enemy.

I have referred in this article to the possibility that offences may be committed by a company in permitting an enemy to vote or in registering transfers to an enemy, and I should perhaps add that by s. 10 of the Act, where an offence committed by a company is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager, secretary or other official of the company, he also is guilty of the offence.

A Conveyancer's Diary.

Property of Enemy Aliens—I.

At common law it is unlawful in time of war to have any dealings with enemy aliens. An enemy alien is a person who voluntarily resides or carries on business in the enemy country (*Porter* v. *Freudenberg* [1915] 1 K.B. 857). As to the application of the rule to bodies corporate, see *Daimler Co., Ltd.* v. *Continental Tyre & Rubber Co. (Great Britain), Ltd.* [1916] 2 A.C. 307. The test is not nationality of an individual nor the place of incorporation of a company, but voluntary residence of an individual or the seat of *de facto* control in a company. And this is reasonable, because the object of the rule is to cripple the economic resources of the enemy state. Accordingly, a person of enemy alien nationality who is allowed to remain here in time of war is not an enemy alien in the sense that he loses his rights to sue in our courts (*Princess Thurn and Taxis* v. *Moffitt* [1915] 1 Ch. 58), a point which had some importance when there were present in this country a large number of Huguenot refugees from the tyranny of Louis XIV, with whom we later went to war (see *Porter* v. *Freudenberg*, *supra*, at pp. 870, 871), and is again important now. But an enemy alien in the common law sense is debarred from enforcing his rights here in time of war. That is the rule of common law; but it was thought necessary in the last war to reinforce it by various Trading with the Enemy Acts, and that has been done again in the Trading with the Enemy Act, 1939.

That Act makes it a criminal offence, severely punishable, to "trade with the enemy within the meaning of this Act" (s. 1 (1)). "Trade" is by no means confined to commercial dealings in the narrow sense. Not only does it include any "commercial, financial or other intercourse or dealings with an enemy," but also to pay or transmit any money, negotiable instrument or security for money to or for the benefit of an enemy or to a place in enemy territory (s. 1 (2) (iii)); or to "perform any obligation to, or discharge any obligation of, an enemy, whether the obligation was undertaken before or after the commencement of this Act" (s. 1 (2) (iv)). Further, it is prohibited to take an assignment of any chose in action from an enemy or anyone acting on his behalf (s. 4), or to purchase enemy currency (s. 6).

The definition of "enemy" for the purposes of the Act is contained in s. 2, and follows the rule of common law. It means first "(*a*) any State, or Sovereign of a State, at war with His Majesty," i.e., the German Reich and its Führer. I do not think we are at war with the State of Slovakia. The status of Bohemia and Moravia is obscure. Second, "(*b*) any individual resident in enemy territory." "Enemy territory" means "any area which is under the sovereignty of, or in the occupation of, a Power with whom His Majesty is at war, not being an area in the occupation of His Majesty or of a power allied with His Majesty" (s. 15 (1)). A certificate of the Foreign Office is conclusive on this matter (s. 15 (2)). It is rather difficult to say how the definition will be interpreted, but I should expect that "occupation" means military occupation, with the consequence that "enemy territory" would include the areas formerly known as the Old Reich, Austria, Bohemia, Moravia, Slovakia (other than the portion incorporated in Hungary), Danzig, Memel, together with the parts of Poland not in Russian occupation. It is true that His Majesty is allied with the rather metaphysical entity "Poland," but I take it that the territory of the former Polish state is not at present "in the occupation of" "Poland." The same would, I think, be true of the Czech provinces, even though President Hacha's government still exists in Prague, and even if the Czech emigrés form a government in London. Similarly, it could hardly be said that the Slovak state is not occupied by Germany.

Section 2 also includes within the definition of "enemy," "(*c*) any body of persons (corporate or unincorporate) carrying on business in any place, if and so long as the body is controlled by a person who under this section is an enemy, or (*d*) any body of persons constituted or incorporated in, or under the laws of, a State at war with His Majesty." Accordingly, "enemy" would include, *inter alia*, a corporation or partnership incorporated or constituted in Germany, or elsewhere, in the British Empire, or France, or a neutral country, if the control is in fact vested in an enemy.

It is, however, expressly provided that a person is not an "enemy" by reason only of being an enemy subject.

At common law the property of enemy aliens on land is not confiscable by the Crown, and " subject to any legislation to the contrary or anything to the contrary contained in the treaty of peace when peace comes, enemy property in this country will be restored to its owners after the war, just as property in enemy countries belonging to His Majesty's subjects will or ought to be restored to them after the war " : *per* Lord Parker in the *Daimler Case* [1916] 2 A.C., at p. 347.

The Trading with the Enemy Act therefore prescribes that the Board of Trade may appoint Custodians to look after " enemy property " for the duration of the war (s. 7). And under that section the Board is empowered to make orders for the transfer of such property to the Custodians. It is important to observe in s. 7 that " enemy property " means not only that belonging to, or held or managed on behalf of *enemies*, as defined by the Act, but also of *enemy subjects* (s. 7 (8)). By s. 15 (1) " enemy subject " means " (*a*) an individual who, not being either a British subject or a British protected person, possesses the nationality of a State at war with His Majesty, or (*b*) a body of persons constituted or incorporated in, or under the laws of, any such State." This point must be clearly apprehended in considering s. 7 and the Order made thereunder.

It is a criminal offence to " pay any debt, or deal with any property to which any Order under this section applies, otherwise than in accordance with the provisions of the Order," and the payment or dealing is void (s. 7 (5)).

It is therefore most important that all persons should understand the terms of the Trading with the Enemy (Custodian) Order, 1939 (S.R. & O., 1939, No. 1198), made under s. 7. The Order was made on 16th September and came into force two days later (*ib.*, art. 11).

Article 1 of the Order deals with money payable to " enemies," not to " enemy subjects," nor does it apply to " enemy property." It first provides that " any money which would, but for the existence of a state of war, be payable to or for the benefit of a person who is an enemy, and any money which is to be deemed for the purposes of the Act to be money which would, but for the existence of a state of war, be so payable, shall be paid to the Custodian." Article 1 (ii) specifies a list of kinds of money which are to be paid to the Custodian, without prejudice to the generality of art. 1 (i). It mentions, first, all payments of dividends, interest, etc., in respect of any stock or shares of any company or government or municipal or local authority. This paragraph is reinforced by art. 5 (iii), which commands every company registered in the United Kingdom to inform the Custodian within fourteen days of full particulars of all of its stock, shares, bonds, etc., held by or for the benefit of an enemy. To fail to furnish this information without reasonable cause is an offence under s. 7 (6) of the Act, punishable by a fine of £10 for every day during which the default continues. There will be no insuperable difficulty in furnishing a list of stock, etc., registered in the names of enemies, though even so it may not always be clear that a given name is that of an enemy. But I cannot see how a company can possibly know whether its stock, registered in the names of English trustees, is in fact held in trust for an enemy. It has no notice of the equities.

Next, there must be paid to the Custodian any " securities which have become payable on maturity or by being drawn for repayment or otherwise " if due to an enemy (art. 1 (ii) (*b*)). This paragraph would include not only sums repayable in respect of government or municipal stock due for redemption, or debentures due for redemption, but also the principal of any ordinary mortgage which is due to be paid off.

Third, the article refers to " interest or other payment in respect of any loan or deposit whether secured or unsecured " (art. 1 (ii) (*c*)). This clause, of course, includes mortgage interest, interest on a simple loan and interest on a banking account, since the relation of customer and banker is that of creditor and debtor (see *Foley* v. *Hill*, 1 Ph. 399, per Lord Lyndhurst, L.C., at p. 404).

Fourth, there is to be paid to the Custodian any " profits or share of profits in any business, syndicate or other mercantile enterprise or adventure " (art. 1 (ii) (*d*)). It is to be noted that nothing is here said about the enemy partner's share in the partnership assets themselves, as to which see *Hugh Stevenson & Sons* v. *Aktiengesellschaft für Carbonnagen-Industrie* [1918] A.C. 239. In law " business " is a very wide word, and includes almost all serious occupations (see *per* Lindley, L.J., in *Rolls* v. *Miller*, 27 Ch. D. 71, 88). It is not confined to businesses which are also trades.

Article 1 (ii) (*d*) is, however, reinforced by art. 5 (iv) which requires a notice to be given to the Custodian within fourteen days by every partner of every firm any partner of which becomes an enemy or to which any enemy has lent money.

Article 1 (ii) (*e*) provides that there is to be paid to the Custodian " any money which would, but for the existence of a state of war, be payable to or for the benefit of any person who is an enemy, by way of debt, including any money in the possession of any bankers, whether on deposit or current account or whether held in trust or custody for or for the benefit of an enemy." This provision, of course, catches all ordinary debts, whether for goods supplied, services rendered or money lent. It is also in express terms made applicable to bank balances, notwithstanding that a bank balance, either on deposit or current account, is not a debt in the sense that it can be sued for unless or until the bank's customer has demanded its payment (see *Atkinson* v. *Bradford Third Equitable Benefit Building Society*, 25 Q.B.D. 377, and *Joachimson* v. *Swiss Bank Corporation* [1921] 3 K.B. 110). A banker must give notice of any such balance to the Custodian ; art. 5 (1) provides that such notice is to be given by " any person who holds...for or on behalf of an enemy any property." " Property " includes " any . . . interest in . . . any debt or other chose in action " (art 9 (ii) and the Act, s. 7 (8) (*b*)).

Under art. 1 (ii) (*b*) there is also to be paid to the Custodian any money payable to an enemy by way of " money due under or in respect of any policy of assurance."

(*To be continued.*)

Landlord and Tenant Notebook.

A.H.A., 1923, and the Defence Regulations, 1939.

Part IV of the Defence Regulations, 1939, deals with " Essential Supplies and Work," and contains regs. 49–78. Of these, regs. 61–68 are concerned with " Agriculture and Fisheries." Regulations 61 and 62 in particular may affect the positions of parties to leases and tenancies.

It may be as well to consider definitions at the outset. The two regulations speak of " agricultural land," of " agricultural land held by a tenant," and of " agricultural holding as defined by s. 57 of the Agricultural Holdings Act, 1923."

Regulation 100 defines " agricultural land " as " any land used as arable, meadow or pasture ground only, land used for a plantation or a wood or for the growth of saleable underwood, land exceeding one-quarter of an acre used for the purpose of poultry farming, market gardens, nursery grounds, orchards or allotments, including allotment gardens within the meaning of the Allotments Act, 1922, but does not include land occupied together with a park or pleasure grounds or as a garden other than a market or allotment garden, or land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a race-course."

This definition will be recognised. It is substantially identical with the meaning assigned to " agricultural land," first by the Agricultural Rates Act, 1896, and recently by s. 2 (2) of the Rating and Valuation (Apportionment) Act, 1928 (which paved the way for " de-rating "), the differences being that it does not include the " cottage gardens " which

come between the poultry farms and market gardens of the rating enactment, and "gardens (other than aforesaid)" is omitted from the matters not included.

Regulation 61 authorises the Minister of Agriculture and Fisheries to prohibit the use of agricultural land otherwise than as such. It also enables him to make trespass a criminal offence. Regulation 62 goes further and is of greater interest to landlords and tenants. By reg. 62 (1) the Minister may, in relation to any agricultural land, give such directions with regard to the cultivation, management or use of that land as he thinks necessary or expedient for the purpose of maintaining the production in the United Kingdom of articles essential to the life of the community; and if any directions are contravened or not complied with the Minister, in a case *where the land is held by a tenant*, may, by notice in writing served on the tenant and on the landlord terminate the tenancy on such date as may be specified in the notice.

It is not necessary that land should be an "agricultural holding" as defined in A.H.A., 1923, for the above provisions to apply. Thus, the eighty-six acres of pasture let with farm buildings and an inn, which were the subject-matter of *Re Lancaster and Macnamara* [1918] 2 K.B. 472, C.A., would be within the purview of this part (reg. 62 (1)). The status of land let and used as a poultry farm is doubtful as far as A.H.A., 1923 (see the "Notebook" in vol. 76, p. 666) is concerned, but the interpretation clause of the regulations cited above expressly mentions "land exceeding one-quarter of an acre used for the purpose of poultry farming." On the other hand, by adopting or when adapting a definition drafted for the purposes of de-rating, the draftsmen of the Defence Regulations may have left out something which should have been included; thus, silver fox farms have been held, in Scotland, not to be "agricultural land" for de-rating purposes (*I.R.* v. *Ardross Estates Co.* [1930] S.C. 487). The same would apply to the stud farm discussed in *Re Joel's Lease, Berwick* v. *Baird* [1930] 2 Ch. 359.

What will be the effect of terminating the tenancy by notice on failure to observe the Minister's directions as to cultivation, etc.? The regulations do not provide that the tenancy may be determined at the instance of some party, but by a judicial proceeding, as in the case of premises infringing the regulations made under the Factories Act, 1937 (see s. 146), or in the case of demolition or closing orders under the Housing Acts (see the 1930 Act, s. 40, as amended by the 1935 Act, s. 37). In those cases the tribunal, which is the county court, has a discretion as to terms. Here, the general position seems to resemble most that obtaining in the case of a disclaimer in bankruptcy or liquidation, which has been called a surrender *in invitum*, and the effect or absence of effect on rights of action, rights to fixtures, etc., would be similar; but when the agricultural land which is let is also an "agricultural holding," certain statutory rights are, as will presently be seen, preserved. I think the underlying idea may be said to be that the purpose of increasing and maintaining production will, in the event of any difficulty, be better served if the Minister has only one person to deal with.

Next, reg. 62 (2) empowers the Minister as follows: "where by virtue of this Part of these regulations, *possession* is taken of any land which is an *agricultural holding*, the Minister if it appears to him that at that time the tenant of the holding is not or was not cultivating it according to the rules of good husbandry, may, by notice in writing served on the tenant and on the landlord, terminate the tenancy on such date as may be specified in the notice."

Regulations 61 and 62 and those that follow contain no provisions providing for possession to be taken. The allusion must be to reg. 51, under which a "competent authority, if it appears to that authority to be necessary or expedient so to do in the interests of the public safety, the defence of the realm or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community, may take possession of *any* land, and may give such directions as appear to the competent authority to be necessary or expedient in connection with the taking of possession of that land." A "competent authority" is defined in reg. 49; the expression covers any Secretary of State, the Admiralty, the Board of Trade, the Minister of Agriculture and Fisheries himself, the Ministers of Health, Transport, Supply, Civil Defence, Food, the Postmaster-General and the Commissioners of Works. "Possession"—one of the most equivocal expressions known to the law—is not defined, but the rest of reg. 51, and the provision in reg. 62 for determining tenancies which we are dealing with, suggest that "actual" possession is not necessarily intended. For the remaining provisions of reg. 51 empower the competent authority to abrogate restrictions on user and to impose other restrictions, and the fact that reg. 62 (2) empowers the Minister to determine a tenancy, by serving notice on both parties, implies that such tenancy would otherwise continue.

Regulation 62 (3) now declares the effect of the termination of a tenancy when the land is an agricultural holding. The notice is to be treated as the termination of the tenancy for the purposes of the Agricultural Holdings Act, 1923, but *without any implication* that the notice is to be treated as a notice to quit, or notice to terminate the tenancy, given *by the landlord*; and the provisions of the Act which determine the respective rights of the landlord and tenant of such a holding upon the termination of the tenancy of the holding, or upon the quitting thereof by the tenant, *except* the provisions of ss. 12–14, apply accordingly.

The result is as follows: The tenant's right to compensation for improvements, and the landlord's right to compensation for diminished value, together with the tenant's for increased value, continue. As no notice of intention to claim compensation for improvements is necessary, tenants will not be in difficulties on that score, but should remember that particulars must reach the landlord within two months after the termination. Notice of intention to claim for increased or diminished value must be given before the termination of the tenancy, but no minimum period is specified; so unless the Minister's notice to terminate is very short indeed, there should again be no difficulty. But no claims to compensation for disturbance against landlords can be made on the strength of a Ministry notice.

The last provision which calls for discussion is that of reg. 62 (4). When possession of *agricultural land* is taken by any person by virtue of Pt. IV, ss. 1–8 of the Agricultural Holdings Act, 1923, apply as if (*a*) at the beginning of the period for which possession of the land is retained by virtue of this Part . . . the said person had become entitled to possession thereof as a tenant under a contract of tenancy made at the beginning of that period for the duration thereof, and (*b*) the end of that period were the termination of the tenancy. The sections mentioned are those dealing with compensation for improvements, and the effect of the provision appears to be that if a competent authority takes over land and the authority or someone authorised by it effects statutory improvements, obtaining consent or giving notice when necessary, the value of those improvements to an incoming tenant will ultimately be recoverable from the person dispossessed.

The Home Secretary has made an Order under the Administration of Justice (Emergency Provisions) Act, 1939, altering the hours of the Metropolitan police courts. The Order will come into force on the 20th November. As from that date the Metropolitan police courts, other than the Greenwich and Woolwich Courts, will sit from 9.30 a.m. till 4.30 p.m. The Greenwich Court will sit from 9.30 a.m. to 12.30 p.m., and the Woolwich Court will sit from 2 p.m. to 4.30 p.m. The courts may sit till a later time on any day if the state of business requires it, and it is also provided that a court may be closed at 3.30 p.m. if the whole of the business for that day has been concluded.

Our County Court Letter.

INTERPLEADER SUMMONS.

In a recent case at Coventry County Court (*Thomas* v. *Knox; Knox, claimant*) the execution creditor had recovered judgment in the High Court for £21 as damages for slander and £84 taxed costs. Execution had been levied at the house of the defendant's husband, and the sheriff had seized furniture to the value of £46 14s. The furniture, however, was claimed by the defendant's husband, whose case was that he married the defendant in 1927. No contribution to the joint home had been made by the defendant, and the whole of the goods and chattels in the home were either bought by, given to or made by the claimant. They had never been assigned to his wife, the defendant, or to any other person. The evidence of the plaintiff and his wife was that they had heard the defendant say, in her husband's presence, that the piano was a present to her from her mother. Evidence in corroboration was given by an acquaintance of the parties, but the claimant contended that the piano was a present to himself from his mother-in-law in 1929. His Honour Deputy Judge Finnemore gave judgment for the claimant, with costs.

DISPUTED DELIVERY OF CALVES.

In *Smith* v. *Powell*, recently heard at Evesham County Court, the claim was for £3 as the price of goods sold. The plaintiff was a farmer, and his case was that in the middle of 1938 he had sold a calf to the defendant for 27s., which the defendant paid. As the calf did well, the defendant ordered two more. These were delivered in August at the defendant's farm, and his wife was told that the prices would be 28s. and 32s. No bill was delivered, as the defendant was expected to pay in due course, but he had not done so. The defendant denied having received the calves, and his case was that he never had any calves in August, 1938. The first was delivered on the 8th April, and one (which later died) on the 26th April. Another calf came on the 30th June, but the price (£2 2s.) was withheld because that amount was owing by the plaintiff for keep. Corroborative evidence was given by the defendant's wife. His Honour Judge Roope Reeve, K.C., observed that the defendant had produced records of stock movements, but some entries had been made after the movements. The records were therefore unreliable. The defendant and his wife were wrong in their recollection, and judgment was therefore given for the plaintiff, with costs.

VAN DRIVER'S BREACH OF CONTRACT.

In *Garlick & Sons* v. *Wenham*, recently heard at Trowbridge County Court, the claim was for £1 15s. as damages for breach of contract. The plaintiffs were butchers, and their case was that they had employed the defendant as a van driver at a wage of £1 15s. a week. An implied term of the contract was that the service should be terminated by a week's notice on either side. On Tuesday, the 6th June, the defendant gave notice that he should leave on the following Saturday. The defendant did so, in breach of the custom of the distributive trades that there should be a clear week's notice on either side from the Saturday on which the wages were paid. The defendant's case was that he understood that his notice, given on the Tuesday, was accepted. In any case, weekly employees were liable to be dismissed at an hour's notice, and the notice he gave was adequate. His Honour Judge Kirkhouse Jenkins, K.C., held that it was customary to give a week's notice, ending on Saturday night. The defendant was therefore not entitled to give notice on Tuesday. Nevertheless, in addition to the breach of contract, it was necessary for the plaintiffs to prove damage. They had not lost a single order or customer, and were not a penny poorer by reason of the defendant leaving their employ. One of the partners, however, had been inconvenienced in taking his holidays. Nominal damages were recoverable, and judgment was given for the plaintiffs for 1s., without costs.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

The Compensation (Defence) Act, 1939.

Sir,—With regard to the comments under the heading "A Conveyancer's Diary," in last week's issue of THE SOLICITORS' JOURNAL, we can give you another example of the unfair working of the Compensation (Defence) Act, 1939.

Some two or three months before war broke out, clients of ours bought a building site for which they paid something over £10,000. At the outbreak of war, one-half of the site had been partially developed and the other half has now been acquired by the local authority under the Emergency Powers (Defence) Cultivation of Lands (Allotments Order, 1939) for use as allotments. It would seem that under para. 5 of the Order, our clients can claim only a rental value of the land for agricultural purposes, which it is safe to assume is far below the true rental value as building land, so that the loss of interest on capital will be considerable, without taking into account loss of profit on the development of the site.

London, W.1. CHRISTOPHER & SON.
10th November.

Reviews.

Reminiscences and Reflections. By HEBER L. HART, K.C., LL.D. 1939. Demy 8vo. pp. (with Index) 368. London: John Lane, The Bodley Head. 10s. 6d. net.

This is a better book to dip into than to read, because though there are plenty of good things in it, anyone who started at Chapter I to go straight on would probably be disappointed when he realised that it consists entirely of loose ends. Perhaps the life of a busy lawyer, turning his mind rapidly from one case to another, and often handling several simultaneously, induces a habit of mind not easily subjected to a long unified composition; most of the best legal memoirs have the quality of desultory table talk. This volume, though more irregular in form than the charming "Lawyer's Notebook," of Mr. E. S. P. Haynes, has much in common with it in point of method. Here you will find all sorts of things, reflections and speculations on this and that, legal reminiscences and stories, and a sort of museum of curiosities—a Gladstone postcard, a cheque by Wellington, Spurgeon's notes for a sermon, and the like. Then there are addresses on several occasions—a Reader's feast at the Middle Temple, a call to the Bar, a welcome to a party of American lawyers, the 250th anniversary of the birth of the poet Cowper. All through the book there is much shrewd thought and observation and the casual searcher in its pages can turn his idleness into pleasure and profit.

Books Received.

A Handbook on the Death Duties. By H. ARNOLD WOOLLEY. Solicitor of the Supreme Court. Third Edition. 1939. Demy 8vo. pp. xxxiv and (with Index) 232. London: The Solicitors' Law Stationery Society, Ltd. 17s. 6d. net.

Supplement to the Seventeenth Edition of Rent and Mortgage Interest Restrictions. By the Editor of "Law Notes," containing The Rent and Mortgage Interest Restrictions Act, 1939, with an Introduction and Explanatory Notes. pp. (with Index) 45. London: The "Law Notes" Publishing Offices. 3s. net.

The Courts (Emergency Powers) Act, 1939, *as amended by The Possession of Mortgaged Land (Emergency Provisions) Act*, 1939. Full text of the Acts, with an Introduction and Explanatory Notes, Rules and Forms. By the Editors of "Law Notes." pp. vii and (with Index) 64. London: The "Law Notes" Publishing Offices. 3s. net.

To-day and Yesterday.

LEGAL CALENDAR.

13 NOVEMBER.—During the short and violent reign of Richard III, Robert Morton, Archdeacon of Winchester, was deprived of the office of Master of the Rolls, but when Henry VII ascended the throne after the battle of Bosworth he got it back. So actively was he employed in the service of the new King in other respects that he asked to be given a partner in his original appointment, which he was unwilling to relinquish. Accordingly, on the 13th November, 1485, he and William Eliot were jointly confirmed in the office for their lives and that of the survivor of them.

14 NOVEMBER.—That heroically futile patriot, Robert Emmett, had an elder brother named Thomas, who pursued his legal studies in London at the Temple and was called to the Irish Bar in 1791. He became a leader of the United Irishmen, was arrested in 1798, and spent two and a half years in prison in Scotland. After that he was banished to France and forbidden under the severest penalties to return. In 1804 he went to America, where he rose so quickly in his profession that by 1812 he was Attorney-General of the State of New York. He died there on the 14th November, 1827.

15 NOVEMBER.—On the 15th November, 1897, Lord Esher, retiring from the Mastership of the Rolls at the age of eighty-two, bade farewell to the legal profession. He said: "I am no longer a judge and I hardly for a time was able to determine what I am. I am still one of you, as I think I am a serjeant-at-law. I am a barrister of more than ten years' standing. I am capable of being appointed a county court judge or to sit as a commissioner to hold an assize. I am, therefore, now what I have always tried to be, one of you, and only one of your equals. It is true that on the Bench when I was in the position of an officer on the quarter-deck I was obliged to give occasionally words of command, but the moment one leaves the deck one is nothing but a fellow-officer."

16 NOVEMBER.—Edward Law was born at Great Salkeld, in Cumberland, on the 16th November, 1750, the son of a clergyman who afterwards rose to be Bishop of Carlisle. He was the sixth of the thirteen children of his parents and the fourth son. One of his brothers became Bishop of Elphin and another Bishop of Bath and Wells. He was educated at the Charterhouse in London, at Peterhouse College, Cambridge, and at Lincoln's Inn. In 1818, when he died after a strenuous life that had brought him to the Bench as Lord Chief Justice and to the peerage as Lord Ellenborough, it was in the Charterhouse that he was buried.

17 NOVEMBER.—Henry Brougham had a way of making himself as troublesome to his friends as to his enemies. In 1830, in the midst of the great electoral agitation, he was returned to Parliament vehemently pledged to Reform and with a scheme in his pocket all ready to lay before the House. Though many of the Whig leaders would have been glad to leave the stormy petrel out of the Cabinet, he was invited to become Attorney-General on the 17th November. With his eye on the safe yost of Master of the Rolls, which in those days would not have excluded him from Parliament, he indignantly declined and threatened to proceed at once with a motion putting forward his sweeping scheme. So, to placate him and at the same time to render him harmless, they made him Lord Chancellor.

18 NOVEMBER.—Mr. Baron Greek did not sit long on the Bench of the Court of Exchequer. He was appointed early in 1576 and died on the 18th November, 1577, aged sixty-three years. He was buried in St. Botolph's Church, Aldersgate.

19 NOVEMBER.—On the 19th November, 1869, Mr. Justice Hayes had a fatal stroke while unrobing after coming out of court.

THE WEEK'S PERSONALITY.

It was a great shock to the legal profession when Mr. Justice Hayes had a paralytic stroke while taking off his robes after trying a case at Westminster, for he was only sixty-four, and his jovial personality had made him extremely popular both at the Bar and on the Bench to which he had not long before been promoted. His death, five days after the seizure, quenched for ever a wit that had been the delight of his contemporaries and demonstrated how ephemeral are those flashes that sometimes illumine the art of advocacy, for though it was said that "if there had been an album kept in Westminster Hall to record the witticisms of the Bar many would have been the pages devoted to his witty pleasantries and whimsical pieces," hardly any of them have come down to us. Perhaps it is best, for that sort of thing depends so much on catching the fleeting atmosphere of the moment that a disjointed recapitulation conveys no sparkle. We catch a glimpse of him appearing for the defendant in the case of *Woodcock* v. *Bird*, at Warwick. Chief Justice Jervis remarks that "it is a pity two birds couldn't live in harmony." Instantly Mr. Hayes replies "Yes, it is, my lord. But my client complains of the length of the plaintiff's bill." Such pat readiness must have given variety to dull cases.

FATHER CHRISTMAS.

As a change from the *ex parte* sneers too often directed at the law it was rest and refreshment to find five-year old John Cyril Lee coming to the High Court for damages in so happy a spirit of confidence that he was prepared to mistake Mr. Justice Wrottesley for Father Christmas. His elders have before now noted the pleasing effects produced by judicial robes, and Mr. Maurice Healey, K.C., in his delightful reminiscences of the Irish legal world, described how Lord Justice Holmes "was short, bearded and looked like a severe edition of Father Christmas attempting to disguise himself as a retired admiral." A somewhat similar imagery must have suggested itself when the late Lord Justice Scrutton wore the scarlet of the King's Bench. Now with December approaching, perhaps the infant plaintiff has shown the way to making the courts really popular in the jolliest sense with a Christmas party in the Bear Garden, a score of varied impersonations of Santa Claus by His Majesty's judges, parcels of damages from the unclaimed funds in Chancery hanging on the tree and the Lord Chancellor in the role of the good fairy to hand them out to promising and well conducted litigants.

ATTITUDE TO HUMOUR.

A leading article in one of the more dignified "dailies" lately took as its text a recent judicial description of a pillion girl as "the peach on the perch" and delivered a grave little homily approving wit on the Bench as providing "the sudden relief that comes of a break in tension" and displaying "a healthy sanity and sense of proportion." The joke in question it described as "comfortingly human." The writer may be glad to know that Chief Justice Erle shared his general opinion and once when counsel had raised a laugh in court said: "The Court is very much obliged to any learned gentleman who beguiles the tedium of a legal argument with a little honest hilarity." But, as Sir Chartres Biron justly remarked, the best jokes of the judges are "heard but not seen." In wit of that class Darling, J., had little skill while Lord Sumner was a master. Take, for example, the passage in a summing-up to a jury in a City case: "On the occasion in question, if the defendant is to be believed, he exhibited the dignity of a grandee of Spain and the resignation of a Christian martyr. The defendant, you will remember, is a company promoter."

Notes of Cases.

Judicial Committee of the Privy Council.

Probodh Kumar Das and Another *v.* The Dantmara Tea Co., Ltd., and Others.

Lord Macmillan, Sir George Rankin and Mr. M. R. Jayakar. 10th October, 1939.

India—Transfer of Property—Contract of Sale without Conveyance—Part Performance by Transferee—Sale with Completion of Title to other Transferee—Right of First Transferee to sue for Declaration that Second Transferee without Rights to Estate—Transfer of Property Act (IV of 1882), s. 53A.

Appeal from a decision of the High Court, Fort William, in Bengal (Mitter and Ghose, JJ.), dated the 18th August, 1936.

A certain tea estate was mortgaged by the company owning it to a firm called Gillanders, Arbuthnot & Co. That firm, having obtained an order for the compulsory winding up of the company, purchased the estate at auction from the company's liquidators, but did not obtain any conveyance in their favour. Then by an agreement dated the 10th October, 1931, they sold the estate to one, S. N. Roy, who paid a first instalment of the price only, and entered into possession. No conveyance of the estate to S. N. Roy was ever executed. On the 1st June, 1934, the partners of Messrs. Gillanders assigned the estate to the Dantmara Tea Co., Ltd., that deed of assignment reciting that Roy had failed to complete the contract of the 10th October, 1931. On the 1st June, 1934, the partners and the liquidators of the company which formerly owned the estate executed a deed of sale, which was duly registered, transferring the estate to the Dantmara Company. The plaintiffs, persons claiming as successors in title to Roy, brought an action for a declaration that the Dantmara Company were debarred from enforcing any right to the estate, and an injunction. The defendants challenged the plaintiffs' right to sue. The High Court, reversing a decision of the Second Additional Subordinate Judge of Chittagong, decided in favour of the Dantmara Company, and the plaintiffs now appealed. By s. 53A of the Transfer of Property Act: "Where any person contracts to transfer for consideration any immoveable property by writing . . . and the transferee has, in part performance of the contract, taken possession of the property . . . and . . . is willing to perform his part of the contract, then, notwithstanding that the contract . . . has not been registered, or . . . the transfer has not been completed in the manner prescribed . . . by . . . law . . . the transferor . . . shall be debarred from enforcing against the transferee . . . any right in respect of the property . . . other than a right expressly provided by the . . . contract . . ." (*Cur. adv. vult.*)

Lord Macmillan, delivering the judgment of the Board, said that, in their lordships' opinion, s. 53A conferred no right of action on a transferee in possession under an unregistered contract of sale, and it was conceded that the appellants had no right of action apart from that section. They agreed with Mitter, J., that the right conferred by the section was one available only to the defendant to protect his possession. The appeal must be dismissed.

Counsel: *C. Bagram; J. M. Pringle.*

Solicitors: *Callingham, Ormond & Maddox; T. L. Wilson & Co.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Appeal.

Hassard-Short *v.* Cawston.

Greene, M.R., Clauson and Goddard, L.JJ. 19th October, 1939.

Education—Land conveyed to Vicar and Churchwardens—Conveyed for purposes of Elementary School—School closed—Destination of Land—School Sites Act, 1841 (4 & 5 Vict., c. 38), s. 2.

Appeal from Simonds, J. (83 Sol. J. 498).

In 1883 one Cawston, being absolute owner of a piece of land, conveyed it in consideration of £250 to the vicar and churchwardens of a parish for the purposes of an for elementary school and a schoolmaster's house to be used ever as a school for children or adults of the labouring, manufacturing or other poorer classes of the parish, but for no other purpose, under the School Sites Act, 1841. Till 1937 the school was so used. It was then closed owing to the building in the neighbourhood of a large council school. Simonds, J., held that the site reverted to the grantor under s. 2 of the Act.

Greene, M.R., dismissing the vicar's appeal, said that it was clear that Cawston meant to execute a conveyance to operate by virtue of the provisions of the Act and carry with it all the consequences for which the Act provided. This was a pure matter of construction of the document, and the reference to the Act involved the introduction of the proviso for reverter. It had been argued that there could be no reverter when the conveyance was by an absolute owner who conveyed for value as beneficial owner. But s. 2 itself contemplated grants by way of sale, and the fact that the conveyance was made by the grantor as beneficial owner could not affect the matter. It was further argued that the 1841 Act did not exclude conveyances under it from the operation of the Mortmain and Charitable Uses Act, 1735, and that accordingly the conveyance was void *ab initio* for want of enrolment. But the 1841 Act was a code in itself and the Mortmain Acts did not apply to conveyances under it. Even if his lordship was wrong on the point, he considered that at the relevant date the necessity for complying with the formalities of the Mortmain Acts was removed by the Public Parks, Schools and Museums Act, 1871, s. 4.

Clauson and Goddard, L.JJ., agreed.

Counsel: *Wigan* and *A. N. Hall; J. Nesbitt.*

Solicitors: *Day & Son; Dennes & Co.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Hewitt *v.* Bonvin.

MacKinnon and du Parcq, L.JJ. and Bennett, J. 19th October, 1939.

Negligence—Motor Car—Driven by Owner's Son with his Consent—Accident—Owner's Liability.

Appeal from Lewis, J.

In July, 1937, the owner of a motor car told his son never to drive it without his consent. On the 22nd August the owner being absent from home, the son obtained permission to use it from his mother, who had the owner's authority to give him leave to borrow it. The son wished to use it entirely for his own purposes, i.e., to drive from London to Wisbech with some friends, two girls, with whom his parents were not acquainted, and a young man. While returning from Wisbech with the young man he was involved in an accident through his negligent driving and his passenger was killed. The administrator of the deceased brought an action against the motor car owner and his son. Lewis, J., gave judgment against both defendants, holding that as the son was driving with the owner's consent he was his agent on that journey.

MacKinnon, L.J., allowing the motor car owner's appeal, referred to "Salmond on Torts" (9th ed.), p. 89, and *Quarman* v. *Burnett*, 6 M. & W. 499, and said that before any question as to the right and control over a tortfeasor arose it must be shown that in doing the act complained of he was employed by a third party to do work for him. That was not established by mere proof that the tortfeasor was using a chattel or driving a vehicle belonging to a third party, though that might be some evidence of the proposition. A person might be temporarily employed without remuneration. If a man said

to his friend or son: "The chauffeur is ill. Will you drive me in my car to the station?" no doubt the friend or son was *pro tempore* his servant. But, even in the case of a chaffeur regularly employed, if, when driving his master's car, he knocked someone down, the master would escape liability by showing that he was using the car on an unauthorised journey for his own purpose or benefit, i.e., that he was at the time not doing his master's work. This plaintiff, to make the motor car owner liable, had to show that (1) the son was employed to drive the car as his father's servant, and (2) he was, when the accident happened, driving it for his father and not merely for his own benefit and concerns. But the son was driving his own friend for his own purpose and his father had no interest or concern in what he was doing. The loan of a chattel for the borrower's purpose was not the case of the employment of a servant to do work for an employer. Judgment should be entered for the father, with costs.

DU PARCQ, L.J., and BENNETT, J., agreed.

COUNSEL: *A. Orr* (for *A. M. Stevenson*); *B. O'Malley*.

SOLICITORS: *Greene & Underhill*; *Russell & Arnholz*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Provender Millers (Winchester), Ltd. *v.* Southampton County Council.

Greene, M.R., Clauson and Goddard, L.JJ.

23rd, 24th, 25th and 26th October, 1939.

WATER AND WATERWAYS—RIVER—ALTERATION IN CHANNEL—WORKS BY PUBLIC AUTHORITY—DIMINUTION IN FLOW—LIABILITY.

Appeal from Farwell, J. (83 SOL. J., 673).

The plaintiffs were millers in Winchester, with a mill obtaining water power from the Itchen. The defendants were a local authority responsible for the maintenance of the roads in Winchester, including bridges. A highway or bridge known as Broadway, crossing the Abbey Stream (which ran approximately parallel with the Itchen and was connected with it at divers points), was vested in the defendants as a public authority, and it was their statutory duty to do all things necessary to maintain it. Till October, 1937, the plaintiffs had always had a sufficient flow of water to get a head at their mill and keep the turbine turning properly. In that month the flow diminished so as to be insufficient. Investigation showed that at a channel or connection between the Itchen above the mill and the Abbey Stream above the Broadway the water was running out of the former and into the latter, whereas it had previously flowed the other way. At that time the defendants had just completed certain works at the Broadway. At one point the Abbey Stream divided into two streams, both of which were eventually carried together through a culvert and out at the other side of the Broadway. The defendants had been advised that certain works were necessary because (1) the culvert had fallen into disrepair and there was danger to the highway, and (2) in times of flood water escaped on to the highway. It had, therefore, been necessary to rebuild the culvert so as to afford the road greater support and to provide an outlet for the flood water. The defendants had set about doing the works without giving notice to anyone. These included, *inter alia*, the removal of the old culvert and the putting in of new culverts. The works were properly done with proper workmanship. Afterwards the amount of water flowing down the Abbey Stream increased considerably as the water previously held up at the culvert used to form a head which spread up the stream, affecting its height, and enabling water to flow from it through the channel into the Itchen. Farwell, J., granted an injunction to restrain the defendants from diminishing the water flowing to the plaintiffs' mill.

GREENE, M.R., dismissing the defendants' appeal, said that, dealing with the matter apart from statutory rights and duties, the question whether the Abbey Stream was natural or artificial was of no importance. It was said that as riparian owners the defendants might protect their land from flooding and might remove an artificial obstruction in the watercourse. In the case of an artificial stream the second proposition was subject to the consideration that the right to water depended either on the scope of the grant or on the quantity of water in fact enjoyed during a period of prescription so that an obstruction could only be removed if the person concerned did not thereby obtain a greater flow of water than he was entitled to. As to protection from flooding, the defendants on the facts had done more than protect themselves against flood. They were not entitled to increase the flow of the water to the prejudice of others who had interests in the water, whether the stream was natural or artificial. They had not shown that to protect themselves against flooding it was necessary to diminish the water at the plaintiffs' mill. Further, they were not entitled to alter the alveus of the stream so as to affect its normal flow. The water of one branch of the stream was now carried in a new culvert separate from that carrying the water of the other branch. This was a new alveus made where no water flowed before. As to the alleged removal of an artificial obstruction, if this was an artificial stream, so far as the evidence went the old culvert or something of the same dimensions might have been there all along. If this was a natural stream there was no evidence what were its dimensions before the culvert was made. It was not legitimate for the court to draw any inferences as to what was the natural bed of the stream before the culvert was made. But what the defendants had done could not be called the removal of an obstruction. No doubt the construction which covered the watercourse was technically a bridge, but from another and perhaps more accurate point of view this was merely a covered watercourse. The defendants had not merely substituted a new cover for the old one, but had made a new watercourse. As to the question of statutory duty, the defendants set out to perform a task admittedly necessary, but went outside their duty in permanently altering the natural flow of the stream. It was for them to justify that excess. If the only way of performing the statutory duty reasonably and without extravagant devices involved that excess they would be under no liability. Farwell, J., stated the law correctly. It would have been easy to do this work so as to afford protection against flood water without affecting the natural flow in normal times. The burden on the defendants had not been discharged.

CLAUSON and GODDARD, L.JJ., agreed.

COUNSEL: *Gover*, K.C., *Roger Turnbull* and *Hesketh*; *Harman*, K.C., and *Wilfrid Hunt*.

SOLICITORS: *Robbins, Olivey & Lake*, for *F. V. Baker*, of Winchester; *Sharpe, Pritchard & Co.*, for *Bell, Pope, Bridgwater & Hughes*, of Southampton.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

A. *v.* B.

Greene, M.R., Slesser, MacKinnon, Clauson, Goddard and du Parcq, L.JJ.

20th and 23rd October and 6th November, 1939.

JUDGMENT — DEBT — ENFORCEMENT — ASSETS SUFFICIENT—OTHER CREDITORS—WHETHER DEBTOR "UNABLE IMMEDIATELY" TO SATISFY JUDGMENT—COURTS (EMERGENCY POWERS) ACT, 1939 (2 & 3 Geo. 6, c. 67), s. 1 (4).

Appeal from Oliver, J.

On the 25th September, 1939, the plaintiffs obtained judgment against the defendants, a company selling furniture on hire purchase, in an action to recover a debt of £800, there being no defence. The plaintiffs sought leave under the Courts (Emergency Powers) Act, 1939, to enforce the judgment. The defendants had sufficient assets to satisfy it but an affidavit by their managing director stated that till the outbreak of war they had always been able to meet their

liabilities, but that immediately afterwards payments diminished and several hirers defaulted: that new business had declined, and two shops which previously took £250 a week had taken nothing since the outbreak of war: that the company could not now pay in full the plaintiffs and other creditors; that if matters did not deteriorate they would probably be able to meet their liabilities in full, but that if leave to enforce this judgment were given the result would be harmful to the creditors and shareholders. Oliver, J., reversing the Master's decision, held that he was bound to give the plaintiffs leave to enforce the judgment. The defendants appealed.

GREENE, M.R., delivering the Court's judgment, said that the burden of proving that a defendant was "unable immediately" to satisfy a judgment within s. 1 (4), and that the inability arose "by reason of circumstances directly or indirectly attributable" to the war lay on that defendant. The only question here was whether the defendants had brought the case within s. 1 (4). Each case must be decided on its own facts. The allegations in the affidavit were insufficient to establish that the defendants were "unable immediately" to satisfy the judgment. There was no exposition of their financial position, no statement of their assets and an insufficient statement of their liabilities. As a general rule in these cases such information must be furnished and the decision should be made in the light of all the facts. It should not be thought that if the debtor were shown to have a sum of cash available to pay the debt he necessarily failed to show that he was "unable" to satisfy it. The word must be construed in a reasonable and common-sense way. The existence of other debts might properly be taken into account, though the weight to be given to this might vary in different cases. It had been sought to treat the Act as passed for the benefit of creditors generally, but the object of s. 1 was rather the protection of debtors. *Tennants (Lancashire), Ltd.* v. *C. S. Wilson & Co., Ltd.* [1917] A.C. 495; 61 SOL. J. 575, was of no assistance. On the facts the defendants had not discharged the burden of proof. But as the legislation was new and the practice not settled they should have a chance of putting in further evidence. The operation of the order of Oliver, J., should be suspended, save as to costs for seven days. If during that period the defendants paid into court the amount of the judgment debt and £50 towards costs the order would be discharged, save as regarded costs. The summons would be referred back to the Master with liberty to the plaintiffs to apply for leave to enforce the judgment, or alternatively for payment of the amount of the judgment debt out of the fund in court, and liberty to the defendants to apply for leave to file further evidence.

COUNSEL: *V. Holmes; Levy*, K.C., and *Caplan*.

SOLICITORS: *Simmons & Simmons; Saunders, Sobell and Greenbury*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Liffen *v.* Watson.

Stable, J. 5th October, 1939.

NEGLIGENCE—MOTOR VEHICLE—SKID INTO STREET REFUGE—INJURY TO PASSENGER—NO SATISFACTORY EXPLANATION OF ACCIDENT BY DRIVER—LIABILITY.

Action for damages for negligence.

The plaintiff was a passenger in a taxi-cab which was being driven by the defendant along a wet road in London. On a sudden application by the driver of the brakes, the vehicle, which was travelling fast, skidded and collided with a street refuge, the plaintiff receiving injuries for which she now claimed damages. The defendant admitted in evidence that, at the speed at which he was travelling, the sudden application of the brakes on the wet road was very likely to result in a skid. He offered an explanation for the necessity of suddenly applying his brakes which his lordship did not accept.

STABLE, J., said that in his opinion where a passenger in a motor car, owing to a sudden application of the brakes by the driver, found himself deposited on a street refuge and injured, that was, although only *prima facie*, some evidence of lack of care or skill on the part of the person on whom the management of the vehicle rested. That presumption might be rebutted, and counsel for the defendant had referred to a number of cases, including *Hinton* v. *Gilchrist, The Times*, 8th March, 1930, where Lord Hanworth, M.R., referred to a passage in *Wing* v. *London General Omnibus Co.*, 53 SOL. J. 713; [1909] 2 K.B. 652, at pp. 663, 664, in which Fletcher Moulton, L.J., as Lord Hanworth, M.R., expressed it, had "explained the principle to be followed in such cases." Lord Hanworth, M.R., in *Hinton* v. *Gilchrist, supra*, also referred to a statement of principle by Erle, C.J., in *Scott* v. *London & St. Katherine Docks Co.* (1865), 3 H. & C. 596, at p. 601. He (Stable, J.) found some difficulty in understanding how the Divisional Court in *Hinton* v. *Gilchrist, supra*, once it had adopted, as it did, the principle stated by Erle, C.J., *supra*, was in a position to decide the case before it in favour of the defendant. The observations of Fletcher Moulton, L.J., in *Wing* v. *London General Omnibus Co., supra*, which were *obiter*, were to the effect that there was in the case before him no evidence whatever that the accident was due to negligence on the part of the servants of the defendants, unless the mere occurrence of such an accident as had occurred (a skid) amounted to such negligence. Fletcher Moulton, L.J., was of the opinion that the mere occurrence of such an accident was not in itself evidence of negligence. Since every vehicle had to adapt its own behaviour to that of other persons using the road, the driver of the vehicle having no control over their actions, the fact that an accident had happened to or through a particular vehicle was by itself no evidence that the fault, if any, which led to it was committed by those in charge of the vehicle. He (Stable, J.) thought, however, that, in view of the decision in *Halliwell* v. *Venables* (1930), 74 SOL. J. 264; 99 L.J.K.B. 353, it was impossible to say that Fletcher Moulton, L.J.'s, *dictum* did not go too far; and the principle laid down by Scrutton, L.J., in that case must be applied. Scrutton, L.J., said of the facts before him that all that it was necessary to say about them was that they required explanation by the driver of the motor car. He (Stable, J.) did not accept the explanation which the defendant driver had given of this accident. There must therefore be judgment for the plaintiff.

COUNSEL: *Gilbert Beyfus* and *J. D. Bell; B. L. A. O'Malley* *F.(W. Beney* with him).

SOLICITORS: *H. G. Greenwood; A. E. Wyeth & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Nelson and Another *v.* Cookson and Another.

Atkinson, J. 5th October, 1939.

PUBLIC AUTHORITIES' PROTECTION—MEDICAL OFFICER EMPLOYED BY PUBLIC AUTHORITY—OPERATION PERFORMED IN PURSUANCE OF AUTHORITY'S STATUTORY OBLIGATIONS—PATIENT'S ALLEGATION OF NEGLIGENCE—WHETHER ACTION AGAINST OFFICER TO BE BROUGHT WITHIN SIX MONTHS—PUBLIC AUTHORITIES' PROTECTION ACT, 1893 (56 & 57 VICT. c. 66), s. 1.

Preliminary point of law tried by Atkinson, J.

In March, 1937, the infant plaintiff, Evelyn Muriel Nelson, was admitted to the West Middlesex Hospital, a public health hospital maintained under statutory powers by the Middlesex County Council, for the removal of her tonsils and adenoids. The necessary operation was performed by the first defendant, an assistant medical officer at the hospital, the second defendant, also an assistant medical officer at the hospital, acting as anæsthetist. The plaintiff, suing by her mother as next friend, claimed damages for negligence or breach of duty against both defendants, alleging that, while the operation was in progress, they placed on her face a gag which burnt her.

By his defence the first defendant admitted performing the operation in pursuance of the county council's statutory duties, and that the infant plaintiff was burnt through contact with a hot gag, but denied having been guilty of negligence or breach of duty. He contended that it was not his duty to insert the gag; that the second defendant in fact did so; that if, which he denied, the second defendant was guilty of negligence or breach of duty, he was not acting as the first defendant's servant or agent; and that the action was out of time by virtue of s. 1 of the Public Authorities' Protection Act, 1893. The second defendant pleaded that he inserted the gag at the first defendant's request. He admitted that the plaintiff was burnt, but denied negligence. He also relied on the Act of 1893. On these pleas an order was made under R.S.C., Ord. 25, r. 2, for trial as a preliminary point of law the question whether s. 1 of the Act of 1893 was available to the defendants as a good defence to the action, which question was now argued. By s. 1 of the Act of 1893, "... any action ... against any person for any act done in pursuance ... of any Act of Parliament or of any public duty or authority ... (*a*) ... shall not lie ... unless ... commenced within six months next after the act ... complained of."

ATKINSON, J., said that it was curious that the precise point seemed never to have been argued before. It had long been recognised that, if an act were being carried out by a servant or agent of a public authority, the servant or agent was entitled to the same protection as the authority itself. But it was said that as a public authority was not responsible in law for the negligence of its medical officer there must be a right to sue the medical officer himself. That was an interesting point, but, unfortunately for the plaintiffs, there was an admission in *Freeborn* v. *Leeming* [1926] 1 K.B., at p. 161, that a medical officer was entitled to the same protection as the public authority; and in *Venn* v. *Tedesco* [1926] 2 K.B., at p. 228, McCardie, J., said that it was conceded that medical officers were within the class of individuals covered by the Act. The law had therefore been regarded in those cases as settled, and he could not now rule differently unless he thought that they were wrong. In fact, he thought that they were right, and that as those doctors were acting in pursuance of a duty laid on the council they were entitled to the benefit of the Act. The point, therefore, must be decided in favour of the defendants, and the action failed.

COUNSEL: *Sidney H. Noakes; H. C. Dickens; A. A. Pereira.*

SOLICITORS: *Batchelor, Foord & North; Hempsons; Le Brasseur & Oakley.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Barry and Others; *ex parte* Grey.

Lord Hewart, C.J., Charles and Humphreys, JJ.
6th October, 1939.

CONTEMPT OF COURT—ARTICLE DESCRIBING INTERVIEW BETWEEN REPORTER AND DEFENDANT IN PENDING ACTION—MISTAKE BUT TRIAL OF ACTION NOT PREJUDICED.

Motion for writs of attachment for contempt of court.

In an issue of the *News Chronicle* an article appeared under the heading "Assault Writ for Cowboy Star," which contained the following words: "A writ for alleged assault has been issued against Tex McLeod, the cowboy star ... by Fred Gray [*sic*], stage manager at the Prince of Wales. 'It is the first row I have had since Christmas Day, 1912,' Mr. McLeod told a *News Chronicle* reporter in his dressing-room last night ... 'Mr. Gray and I got on quite well until one day last week ...'" The article then proceeded to give McLeod's version of a dispute which had arisen between himself and Mr. Grey, who brought the present motion. The article contained the following concluding paragraph: "'I didn't hit him at all,' said Mr. McLeod, 'but later he showed me a loosened tooth and said I had done it. Next day he said seven teeth were loose and I had a bill for £97 15s. I refused to pay and now he wants £500 from me.'" This motion for contempt of court was accordingly brought against the editor, publishers and printers of the *News Chronicle*. Grey stated in an affidavit that, while his medical expenses amounted to £97 13s., he had never requested payment of £500; that no sum had ever been mentioned; and that he believed the article to be calculated to prejudice greatly the trial of the action. The editor of the *News Chronicle* stated in an affidavit that, although absent from his office when the article was passed for publication, he accepted responsibility for that publication; that it was not in accordance with the practice of newspapers to publish interviews with a party to a pending action relating to the subject-matter of the action; that he recognised that, by mistake, there had here been a departure from practice which, quite apart from the question whether the article was calculated to prejudice the fair trial of the action, he (the defendant) regretted, and for which he wished to apologise to the court; and that it was not the intention of anyone to prejudice the fair trial of Grey's action, or to interfere with the preparation of his case or with the evidence to be given on his behalf. The affidavit concluded with a submission that, although the publication was a mistake and undesirable, it was not calculated to have the consequences suggested by Grey. Counsel submitted that the article could not be objectionable unless calculated to interfere with the fair course of the trial, and that that was not established. It was argued in support of the motion, reference being made to *Gaskell & Chambers, Ltd.* v. *Hudson, Dodsworth & Co.* [1936] 2 K.B. 595; 80 SOL. J. 721; and *In re William Thomas Shipping Co.* [1930] 2 Ch. 368, that the article was calculated to prejudice the fair trial of the action, to prevent witnesses from coming forward, and to prejudice the jury.

LORD HEWART, C.J., said that the case was of a too familiar kind. It was not necessary to repeat what Lord Russell of Killowen had said in *Reg.* v. *Payne* [1896] 1 Q.B. 577, at p. 580, his words being clearly applicable to the present case. The truth of the matter was expressed in the affidavit of the editor of the *News Chronicle* when he admitted that a mistake had been made, which he regretted, but said that it was not the intention of anyone to prejudice or prevent the fair trial of Grey's action. In fact the fair course of the trial had not been prejudiced. The motion would be dismissed, but without costs.

COUNSEL: *G. O. Slade; Sir William Jowitt*, K.C., and *Valentine Holmes.*

SOLICITORS: *Lucien Fior; Lewis & Lewis.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Obituary.

SIR ALFRED HOPKINSON, K.C.

Sir Alfred Hopkinson, K.C., LL.D., died at Bovington, Hertfordshire, on Saturday, 11th November, at the age of eighty-eight. He was called to the Bar by Lincoln's Inn in 1873, and took silk in 1892. He was also the senior Bencher of Lincoln's Inn, having become a Master in 1896, and Treasurer in 1921. From 1900 to 1913 he was Vice-Chancellor of the Victoria University of Manchester, the charter for which he had drafted in 1879. Sir Alfred also had a political career of distinction, and was first elected to the House of Commons in 1895. He last sat as Unionist member for the combined English Universities from 1926 to 1929. He received the honour of knighthood in 1910.

DR. EDWARD JENKS.

Dr. Edward Jenks, Emeritus Professor of English Law, and late Dean of the Faculty of Laws in the University of London, died at Bishops Tawton, Devon, on Friday,

10th November, at the age of seventy-eight. He was educated at Dulwich and King's College, Cambridge, and was called to the Bar by the Middle Temple in 1887. He wrote numerous books on law and politics, and perhaps the best known are his "Short History of English Law," and "Law and Politics in the Middle Ages." He will also be remembered for the success he achieved in inaugurating a new system of legal education for The Law Society, of which he was director of legal studies from 1903 to 1924.

SIR CHARLES HENRY BOOTH.

Sir Charles Henry Booth, solicitor, of Ashton-under-Lyne, died on Tuesday, 14th November, at the age of eighty-six. Sir Charles was also Clerk to the Ashton-under-Lyne Borough Justices and to the Lancashire County Justices (Ashton-under-Lyne Division). He was admitted a solicitor in 1875.

MR. E. J. GARNER.

Mr. Edward James Garner, solicitor, of Uxbridge, died on Friday, 10th November. He was admitted a solicitor in 1900.

Societies.

Solicitors' Benevolent Association.

The annual general meeting of this Association, postponed from its customary date owing to the cancellation of the Provincial Meeting of The Law Society, was held on the 8th November, at 60, Carey Street.

Mr. HARVEY F. PLANT, the chairman, presided, and in moving the adoption of the annual report, welcomed the President of The Law Society, Mr. Randle Holme. The President, he said, was an old friend and a generous friend of the Association; he had known him professionally ever since the last war, and they had been at the same school. The year had not been an easy one. At its outset the Association had lost its Secretary, Mr. Thomas Gill, who had served for over twenty-eight years, during which time he had not missed an annual meeting or board meeting. The gap he had left was a very difficult one to fill. The board had appointed as his successor the almoner, Miss Kathleen Passmore. This step had required much consideration, for not only was it a big departure from custom to appoint a woman, but they were particularly anxious not to interfere with her valuable work as almoner. Of the wisdom of the appointment there could, however, be no doubt, for her work had been full of energy and conscientious to a degree. Also, she had brought a fresh mind to bear on the Association's problems, and this had already added to the efficiency of the work. When the question of moving the staff and records out of the danger area had arisen at the outbreak of war, she had extended to both the hospitality of her home at Wimbledon, and it was available if need should arise in the future.

The year had been a successful and in some ways a record year. The first record was in the number of new members—683—which brought the total membership to 7,259. This result was largely due to the efforts of the local committees and directors. The London directors by their successful campaign had redeemed the promise which Mr. Plant had made on taking the chair last year: that a special attack on London would be made during his year of office. Another record was the large amount which the Association had been able to distribute in relief—£20,529. Comment was sometimes made on the relatively large amount which was distributed in non-members' cases. Far more applications, however, were received from non-members than from members. This in itself was probably partly because more than half the practising solicitors of the country still did not belong to the Association; and because solicitors who were not sufficiently public-spirited, or who could not afford to belong, were more likely to become, or to make their relatives, objects of the Association's charity. As a benevolent association and not a provident insurance society its duty was to assist those in the greatest need. Members' cases, however, were treated more generously: the maximum grant was £104, twice as much as in a non-member's case, and as the income grew grants to members would be increased before those made to non-members.

The last chairman, Mr. F. L. Steward, had greatly improved the co-operation between the board in London and the local committees in the country, and Mr. Plant had—he said—done his best to carry on the good work. He had attended the annual dinners of two local law societies and addressed members on behalf of the Association. Half-yearly reports were now made to the local committees on the numbers and locality of new members and on donations and legacies. Large numbers of reprints had been ordered and circulated by the committees. A conference had been held in The Law Society's Hall for members of the Standing Council and a representative from each local committee, and had been most successful. The interesting experiment had been tried of advertising in the legal journals, and "The Law Society's Gazette" had accepted an inset leaflet free of charge. These advertisements must have contributed to the satisfactory increase in membership, and the board regarded the experiment as successful.

Mr. HENRY WHITE, vice-chairman, seconding the motion, spoke warmly of the value of Mr. Plant's visit to the Hampshire Committee and of the work of the directors in examining the cases for grant.

Mr. JOHN VENNING, thanking the meeting for re-electing him and Mr. Theodore Goddard honorary auditors, said the choice was appropriate, as they were both directors of the Association's "poor relation," the Law Association. It symbolised the cordiality which had always existed between the two societies.

The Medico-Legal Society.

At a special meeting of the Council of the above Society, held recently, the following decisions were arrived at:—

(1) To suspend the ordinary meetings of the Society for the time being, but to review the situation from time to time in the hope that it may be found possible to hold occasional meetings or to resume the normal activities of the Society.

(2) To cancel the annual dinner which was to have been held in December next.

(3) To continue the publication of the "Review" and the annual subscription of £1 1s. until the end of 1940, both these matters to be again reviewed before the expiration of that period.

An Emergency Committee has been appointed with all the powers of the Council and with power to add to its number from members of the Council. The members of this committee are: The President (Dr. G. Roche Lynch, O.B.E.), The Hon. Treasurer, The Hon. Secretaries, The Hon. Editors, Sir William Willcox, Dr. F. J. McCann, and Mr. Albert Crew.

Rules and Orders.

1939, No. 1610/L.27.

COURTS (EMERGENCY POWERS).

THE COUNTY COURT (EMERGENCY POWERS) (NO. 2) RULES, 1939. DATED NOVEMBER 10, 1939.

I, Thomas Walker Hobart Viscount Caldecote, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by section 2 of the Courts (Emergency Powers) Act, 1939, and by section 17 of the Rent and Mortgage Interest Restrictions Act, 1920, and of all other powers enabling me in this behalf, Do hereby make the following Rules:—

1. The following Rule shall be substituted for Rule 9 of the County Court (Emergency Powers) Rules, 1939*:—

"9. [*Actions and matters.*]—(1) In an action or matter to which subsection (1) or subsection (3) applies, an application by the plaintiff for leave to proceed may be made at the time when the judgment or order is given or made in the presence of the defendant or his solicitor or counsel or on notice in Form No. 2, or at any subsequent time on notice in Form No. 3.

(2) A notice under this Rule may be served by—

(i) a bailiff of the court; or

(ii) the plaintiff or some person in his permanent and exclusive employ; or

(iii) the solicitor of the plaintiff or a solicitor acting as an agent for such solicitor or some person employed by either solicitor to serve the notice.

(3) Where the plaintiff requests that the notice should be served by bailiff, the plaintiff shall file the notice in the court office together with as many copies thereof as there are defendants, and the following provisions shall apply with regard to service:—

(*a*) the notice may be served by delivering it to the defendant in any district in which he may be found; or

(*b*) where the registrar is satisfied by a report of the bailiff or otherwise that, if the notice is served by

* S.R. & O. 1939 No. 996.

delivering it at the defendant's residence or by sending it by post to his last known residence, there is a reasonable probability that the notice will come to the knowledge of the defendant in sufficient time for him to have an opportunity of appearing at the hearing of the application, the notice may be so served ; or

(*c*) if the application is made under subsection (3) in relation to a judgment or order for the recovery of possession of premises in default of payment of rent, and the notice cannot, in the opinion of the registrar, be served in accordance with the foregoing provisions of this paragraph, the notice may, if the registrar thinks fit, be served by delivering it to some person on the premises or by affixing it to a conspicuous part of the premises, and such service shall have the same effect as service of the notice on the defendant.

(4) Where no request is made that the notice should be served by bailiff, the notice shall be served by delivering it to the defendant in any district in which he may be found.

(5) Subject to the foregoing provisions of this Rule, Order VIII shall apply to the service of a notice under this Rule :

Provided that Rule 6 of that Order (which relates to substituted service) shall not apply to service of a notice under this Rule where the application is for leave to proceed to the enforcement of a judgment or order by the execution of an order of commitment.

(6) The court may hear and determine the application if it thinks fit, notwithstanding that there is no appearance by the plaintiff or defendant.

(7) This Rule shall not apply to a default action in which a notice to the effect of Form No. 1 has been served with the default summons."

2. The following Rule shall be substituted for Rule 12 of the said Rules :—

" 12. [*Judgment summons.*]—(1) An application under subsection (1) for leave to enforce a judgment or order under section 5 of the Debtors Act, 1869, may be made at the hearing of the judgment summons on notice to the effect of Form No. 4 incorporated in or annexed to the judgment summons and served on the judgment debtor with the judgment summons.

(2) Where a judgment summons has been served in due time, but without a notice to the effect of Form No. 4, a successive judgment summons may, if the creditor so requests, be issued for service with such a notice, notwithstanding that three months have elapsed since the date of the original judgment summons.

(3) No order of commitment shall be made on the hearing of a judgment summons unless the judge is satisfied either that the foregoing provisions of this Rule have been complied with, or that the judgment or order is one which may be enforced without leave under the Act.

(4) Where an order of commitment was made before the commencement of the Act, an application for leave to proceed to the enforcement of the judgment or order to which the order of commitment relates by the execution of the order of commitment may be made to the judge on notice to the effect of Form No. 3 in accordance with Rule 9."

3. The following Rule shall be substituted for Rule 16 of the said Rules :—

" 16. [*Leave to distrain.*]—(1) An application under paragraph (*a*) of subsection (2) for leave to distrain shall be by originating application and, subject to the provisions of this Rule, the provisions of the County Court Rules, 1936, relating to originating applications shall apply.

(2) The application shall be to the effect of Form No. 8 and the notice required by Order VI, Rule 4 (2) (*c*) (ii), to be served on the respondent with a copy of the application shall be to the effect of Form No. 9 in lieu of the form prescribed in that sub-paragraph.

(3) Order VIII shall apply to the service of the notice subject to the following modifications :—

(*a*) The notice may be served—

(i) by a bailiff of the court ; or

(ii) by the applicant or some person in his permanent and exclusive employ or some person regularly employed by him to collect the rent of the premises to which the application relates ; or

(iii) by the solicitor of the applicant or a solicitor acting as an agent for such solicitor or some person employed by either solicitor to serve the notice.

(*b*) Service of the notice shall be effected not less than 4 clear days before the day fixed for the hearing :

Provided that service may be effected at any time before the day so fixed on the applicant satisfying the registrar by affidavit that the respondent is about to remove from the address stated in the application.

(*c*) Service shall be effected by delivering the notice to the respondent or to some person apparently not less than 16 years old at the premises to which the application relates.

(*d*) Where the notice is served otherwise than by bailiff, the person effecting service shall make an indorsement to the effect of Form No. 31 in the County Court Rules, 1936,* on the copy of the notice retained by him and shall state therein his qualification to serve the document, and shall, within 3 days of the date of service or such further time as may be allowed by the registrar, file in the court office the indorsed copy of the notice and any unserved notice.

(*e*) Where service of the notice has been effected by delivering it to some person other than the respondent, the registrar may, if he thinks fit, dispense with the notice of doubtful service prescribed by Order VIII, Rule 30 (1), and if the respondent does not appear on the day fixed for the hearing, the application may proceed, if the court thinks fit, notwithstanding anything in Rule 30 (2) of that Order.

(4) The application may be heard and determined by the registrar, subject to appeal to the judge under Order XXXVII, Rule 5, and the day fixed for the hearing of the application need not be a court day, and the registrar may hear the application in court or in chambers, whether the judge is holding a court or not.

(5) Where leave to distrain for the rent of any premises is required both by the Act and by the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, the application shall be made in accordance with these Rules and not in accordance with the Rent and Mortgage Interest (Restriction) Rules, 1920, as amended† ; but nothing in this paragraph shall affect the procedure under the last-mentioned Rules on an application for leave to distrain in respect of premises to which the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, apply if the premises are held under a contract of tenancy made after the commencement of the Act."

4. The following Rule shall be inserted in the said Rules after Rule 16 and shall stand as Rule 16A :—

" 16A. [*Leave to exercise remedy or institute proceedings.*]—(1) Subject to Rules 15 and 16 and the subsequent paragraphs of this Rule, an application for leave to exercise a remedy or to institute proceedings under subsection (2) may be made by originating application and the provisions of the County Court Rules, 1936, relating to originating applications shall apply, subject to the modification that the application shall be to the effect of Form No. 8, and the notice required by Order VI, Rule 4 (2) (*c*) (ii) to be served on the respondent with a copy of the application shall be to the effect of Form No. 9.

(2) Where a person desires leave to exercise a remedy specified in paragraph (*a*) of that subsection by means of legal proceedings and the application has not been made before the commencement of the proceedings, the application may be made at the time when the judgment or order in the action or matter is given or made in the presence of the defendant or his solicitor or counsel or on notice to the effect of Form No. 10, or at any later time on notice to the effect of Form No. 10.

(3) Paragraphs (2) to (5) of Rule 9 shall apply to the service of a notice to the effect of Form No. 10 as they apply to the service of a notice under that Rule :

Provided that where a plaintiff in an action for the return of goods applies for leave under the said paragraph (*a*) in respect of those goods, paragraph (3) of Rule 9 shall apply with the modification that, if the goods are in the possession of a person other than the defendant, and the notice cannot, in the opinion of the registrar, be served in accordance with the provisions of that paragraph, the notice may be served, if the court thinks fit, by delivering it to the person in possession of the goods, and such service shall have the same effect as service on the defendant.

(4) The court may, if it thinks fit, hear and determine an application made on notice to the effect of Form No. 10, notwithstanding that there is no appearance by the plaintiff or defendant.

(5) No warrant of delivery of goods shall be issued unless leave under subsection (2) has been given in respect of those goods or the party desiring the issue of the warrant files in the court office a præcipe showing that the issue of the warrant is a remedy which may be exercised without leave under the Act."

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* S.R. & O. 1936 (No. 626) I, p. 282.

† S.R. & O. 1920 (No. 1261) I, p. 1072, as amended : *see* 1921 (No. 932) p. 487, 1923 (No. 901) p. 433, 1924 (No. 818) p. 621, 1928 (No. 970) p. 765, 1933 (No. 995) p. 1004, 1938 (No. 551) I, p. 1649 and 1939 (No. 1017).

5. The following Rule shall be inserted in the said Rules after Rule 14, and shall stand as Rule 14A :—

"14A. [*Form and service of order.*] An order made on an application for leave to proceed to the enforcement of a judgment or order shall be to the effect of Form No. 11, and may be incorporated in the judgment or order, and if not so incorporated, shall be served by the registrar in accordance with Order XXIV, Rule 8."

6. The following Forms shall be added to the Schedule to the said Rules, and shall stand as Forms Nos. 10 and 11 :—

"10.

NOTICE IN PENDING PROCEEDINGS FOR LEAVE TO PROCEED IN ACTION OR MATTER.

(*Title of Action or Matter.*)

Take notice that the plaintiff intends to apply under the Courts (Emergency Powers) Act, 1939, to the court at on the day of , 19 , at the hour of in the noon [*or* at the time when the judgment is given *or* the order is made] for an order giving leave to proceed in the above-mentioned action [*or* matter].

Under the Courts (Emergency Powers) Act, 1939, a person is not entitled, except with the leave of the court, to proceed to exercise any remedy which is available to him by way of the taking of possession of goods [*or as the case may be*] and if the court is of opinion that the person liable to perform the obligation in question is unable to do so by reason of circumstances directly or indirectly attributable to the present war, the court may refuse leave to proceed in the action [*or* matter] or may give leave to proceed therein subject to such restrictions and conditions as the court thinks proper.

If you desire to take advantage of the protection afforded by the said Act, you should attend at the place and time above-mentioned [*or* at the hearing of the action or matter] and you will then have an opportunity of showing cause why the discretion of the court should be exercised in your favour.

To the Defendant.

11.

ORDER ON APPLICATION FOR LEAVE TO PROCEED.

(*Title of Action or Matter.*)

On the application of [*add, if so*, and upon hearing the defendant]

It is ordered that the plaintiff be at liberty to proceed to execution on the judgment given [*or* order made] against the defendant in the above-mentioned action [*or* matter] on the day of , 19 , for the payment of the sum of £ and costs

[*or* It is ordered that the plaintiff be at liberty to proceed to the enforcement of the judgment given [*or* order made] against the defendant in the above-mentioned action [*or* matter] on the day of , 19 , for the payment of the sum of £ and costs, by issuing the order of commitment made on the day of , 19].

[*Add, if so ordered*—

And it is ordered that the plaintiff be allowed the sum of for the costs of this application and that the said sum be added to the costs of the proceedings hereby authorised to be taken]

[*Add, if so ordered*—

And it is further ordered that the warrant of execution [*or* order of commitment] shall not be enforced if the sum mentioned below is paid into court on or before the day of , 19 [*or* by instalments of for every , the first instalment to be paid on the day of , 19].]

Dated this day of , 19 .

Registrar.

Amount payable under the judgment or order .. £
[Costs of this application .. .. £]

£

To the Defendant."

7. These Rules may be cited as the County Court (Emergency Powers) (No. 2) Rules, 1939, and shall come into operation on the 20th day of November, 1939.

Dated the 10th day of November, 1939.

Caldecote, C.

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL, *from the 16th September to 11th November, inclusive.*)

ROYAL ASSENT.

The following Bills received the Royal Assent on the 16th November.

Chartered and Other Bodies (Temporary Provisions).
National Loans.
Prices of Goods.

Progress of Bills.

House of Lords.

Restriction of Advertisements (War Risks Insurance) Bill [H.C.].
Read First Time. [16th November.

House of Commons.

Official Secrets Bill [H.L.].
Read Second Time. [15th November.

Statutory Rules and Orders.

No. 1587. **Air Navigation** (Amendment) (No. 3) Order in Council, dated November 3.

No. 1588. Air Navigation (Licensing of Public Transport) Order, 1938 (Revocation) Order in Council, dated November 3.

No. 1581. **Customs.** The Export of Goods (Prohibition) (No. 2) Order, 1939, Amendment (No. 10) Order, dated November 7.

No. 1597. Customs. The Export of Goods (Prohibition) (No. 2) Order, 1939, Amendment (No. 11) Order, dated November 8.

No. 1611. Customs. Open General Export Licence in respect of Goods sent by Parcel Post, dated November 10. (No. G.L. 215).

No. 1599. **Emergency Powers (Defence).** The Condensed Milk (Provisional Prices) (No. 3) Order, dated November 9.

No. 1607. Emergency Powers (Defence). Order, dated November 10, amending the Dried Fruits (Maximum Prices) (No. 2) Order, 1939.

No. 1613. Emergency Powers (Defence). Order, dated November 11, revoking the Margarine and Cooking Fats (Provisional Control) Order, 1939, and amending the Margarine and Cooking Fats (Requisition) Order, 1939.

No. 1605. Emergency Powers (Defence). General Licence, dated November 9, under the Oilseeds, Vegetable Oils and Fats and Marine Oils (Control) Order, 1939.

No. 1614. Emergency Powers (Defence). Order, dated November 11, amending the Oilseeds, Vegetable Oils and Fats and Marine Oils (Control) Order, 1939.

No. 1585. Emergency Powers (Defence). The Control of Fertilizers (No. 1) Order, dated November 7.

No. 1563. Emergency Powers (Defence). The Control of Hemp (No. 4) Order, dated November 6.

No. 1562. Emergency Powers (Defence). The Control of Molasses and Industrial Alcohol (No. 5) Order, dated November 6.

No. 1564. Emergency Powers (Defence). Order, dated November 6, amending the Pigs (Provisional Prices) Order, 1939.

No. 1584. Emergency Powers (Defence). Order, dated November 7, amending the Pigs (Provisional Prices) (Northern Ireland) Order, 1939.

No. 1561. Emergency Powers (Defence). The Public Entertainments (Restriction) (No. 5) Order, dated November 6.

No. 1612. Emergency Powers (Defence). The Public Entertainments (Restriction) (No. 6) Order, dated November 8.

No. 1558. Emergency Powers (Defence). The Road Vehicles (Fire Brigade Trailer Pumps) Order, dated October 27.

No. 1604. Emergency Powers (Defence). The Control of Rubber Boots (No. 1) Order, 1939, Revocation Order, dated November 9.

No. 1606. Emergency Powers (Defence). The Sugar (Maximum Prices) (No. 4) Order, dated November 9.

No. 1600. Emergency Powers (Defence). The Invert Sugar (Maximum Wholesale Prices) Order, dated November 9.

No. 1545. **Safeguarding of Industries** (Exemption) No. 5 Order, dated November 2. (Acid oxalic; Aluminium chloride (anhydrous); Cyclohexylamine; Xylolmeta).

No. 1560. **Young Persons (Employment).** The News Agencies and Communications Companies (Messengers) Regulations, dated November 4.

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve of the appointment of The Hon. Mr. Justice NICOLAAS JACOBUS DE WET, Chief Justice of the Union of South Africa, to be a member of His Majesty's most honourable Privy Council.

The India Office announce that the King has been pleased to approve the appointment of Mr. STEPHEN LEONARD SALE as a Puisne Judge of the High Court of Judicature at Lahore in the vacancy that will occur on the retirement this month of Sir James Addison.

The following appointments and promotions have taken place in the Colonial Legal Service:—

Mr. H. G. SHELDON to be Crown Counsel, Hong Kong; Mr. L. E. V. MCCARTHY, Solicitor-General, to be Puisne Judge, Supreme Court, Gold Coast; MUSTAFA FUAD ZIAI BEY, Puisne Judge, Cyprus, to be Puisne Judge, Supreme Court, Gold Coast; and Mr. A. C. SPURLING, Resident Magistrate, to be Crown Counsel, Kenya.

Notes.

The annual ceremony of the nomination of the sheriffs for all the Counties of England and Wales, except the Duchies of Lancaster and Cornwall, took place in the Lord Chief Justice's Court on the 13th November, Sir John Simon, Chancellor of the Exchequer, presiding. Accompanying him on the bench were Lord Amulree, the Lord Chief Justice (Lord Hewart), Mr. Justice Branson, Mr. Justice Charles, Mr. Justice Atkinson, Mr. Justice Wrottesley, and Mr. Justice Asquith.

The Directors of Equity & Law Life Assurance Society announce that Mr. A. L. Gibb, Chief City Superintendent in charge of the Society's office at 30, Coleman Street, London, E.C.2, will retire on pension on 31st December. To succeed Mr. Gibb the Directors have appointed Mr. Wm. Mathie, at present the Society's Superintendent for Scotland at 141, St. Vincent Street, Glasgow, C.2. Mr. E. A. Buchanan, Chief Inspector at Glasgow, will succeed Mr. Mathie. The Directors also announce the opening, as from 1st December next, of offices at 40, Prince of Wales Road, Norwich, in charge of Mr. A. L. Wagland, who has been appointed District Superintendent for the Eastern Counties.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
Nov. 20	Blaker	More	Jones
,, 21	More	Reader	Ritchie
,, 22	Reader	Andrews	Blaker
,, 23	Andrews	Jones	More
,, 24	Jones	Ritchie	Reader
,, 25	Ritchie	Blaker	Andrews

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE SIMONDS. Witness.	MR. JUSTICE CROSSMAN. Non-Witness.	MR. JUSTICE MORTON. Witness.
	Mr.	Mr.	Mr.	Mr.
Nov. 20	Reader	Blaker	Ritchie	Andrews
,, 21	Andrews	More	Blaker	Jones
,, 22	Jones	Reader	More	Ritchie
,, 23	Ritchie	Andrews	Reader	Blaker
,, 24	Blaker	Jones	Andrews	More
,, 25	More	Ritchie	Jones	Reader

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 23rd November, 1939.

	Div. Months.	Middle Price 15 Nov. 1939.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	103½	3 17 4	3 14 5
Consols 2½%	JAJO	68	3 13 6	—
War Loan 3½% 1952 or after ..	JD	91¾	3 16 3	—
Funding 4% Loan 1960-90	MN	105½	3 15 10	3 12 2
Funding 3% Loan 1959-69	AO	92	3 5 3	3 8 10
Funding 2½% Loan 1952-57 ..	JD	91	3 0 5	3 8 6
Funding 2½% Loan 1956-61 ..	AO	85¼	2 18 8	3 10 0
Victory 4% Loan Av. life 21 years	MS	105½	3 15 10	3 12 6
Conversion 5% Loan 1944–64 ..	MN	107⅞	4 12 8	2 17 7
Conversion 3½% Loan 1961 or after	AO	92¼	3 15 10	—
Conversion 3% Loan 1948-53 ..	MS	97¼	3 1 8	3 5 3
Conversion 2½% Loan 1944-49 ..	AO	95½	2 12 6	3 1 8
National Defence Loan 3% 1954-58	JJ	96	3 2 6	3 5 9
Local Loans 3% Stock 1912 or after	JAJO	79½	3 15 6	—
Bank Stock	AO	310	3 17 5	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	74	3 14 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	80	3 15 0	—
India 4½% 1950-55	MN	103	4 7 5	4 2 6
India 3½% 1931 or after	JAJO	81	4 6 5	—
India 3% 1948 or after	JAJO	69	4 6 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	106	4 4 11	4 2 6
Sudan 4% 1974 Red. in part after 1950	MN	103½	3 17 4	3 12 2
Tanganyika 4% Guaranteed 1951-71	FA	102	3 18 5	3 15 6
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	104	4 6 6	2 10 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	87	2 17 6	3 11 7
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	96½	4 2 11	4 4 1
Australia (Commonw'th) 3% 1955-58	AO	83½	3 11 10	4 5 8
*Canada 4% 1953-58	MS	106½	3 15 1	3 8 2
Natal 3% 1929-49	JJ	96	3 2 6	3 11 2
New South Wales 3½% 1930-50 ..	JJ	93½	3 14 10	4 5 0
New Zealand 3% 1945	AO	89½	3 7 0	5 5 4
Nigeria 4% 1963	AO	101½	3 18 10	3 18 0
Queensland 3½% 1950-70	JJ	85½	4 1 10	4 7 6
South Africa 3½% 1953-73	JD	98½	3 11 1	3 11 6
Victoria 3½% 1929-49	AO	92½	3 15 8	4 8 11
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	75½	3 19 6	—
Croydon 3% 1940–60	AO	86½	3 9 4	3 19 9
Essex County 3½% 1952-72	JD	97½	3 11 10	3 12 9
Leeds 3% 1927 or after	JJ	76	3 18 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase..	JAJO	88	3 19 7	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	66	3 15 9	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	77	3 17 11	—
Manchester 3% 1941 or after ..	FA	76	3 18 11	—
Metropolitan Consd. 2½% 1920-49 ..	MJSD	94	2 13 2	3 4 2
Metropolitan Water Board 3% "A" 1963-2003	AO	78½	3 16 5	3 18 5
Do. do. 3% "B" 1934-2003 ..	MS	80½	3 14 6	3 16 3
Do. do. 3% "E" 1953-73 ..	JJ	85	3 10 7	3 15 10
*Middlesex County Council 4% 1952-72	MN	102	3 18 5	3 16 0
* Do. do. 4½% 1950-70	MN	105	4 5 9	3 18 6
Nottingham 3% Irredeemable ..	MN	75½	3 19 6	—
Sheffield Corp. 3½% 1968	JJ	95	3 13 8	3 15 9
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	97½	4 2 1	—
Gt. Western Rly. 4½% Debenture ..	JJ	103½	4 6 11	—
Gt. Western Rly. 5% Debenture ..	JJ	112½	4 8 11	—
Gt. Western Rly. 5% Rent Charge ..	FA	106	4 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	105	4 15 3	—
Gt. Western Rly. 5% Preference ..	MA	81	6 3 5	—
Southern Rly. 4% Debenture ..	JJ	97½	4 2 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½	3 18 10	3 18 0
Southern Rly. 5% Guaranteed ..	MA	105	4 15 3	—
Southern Rly. 5% Preference ..	MA	84	5 19 1	—

* Not available to Trustees over par.
† Minimum price.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.